

**COMMISSION IMPLEMENTING REGULATION (EU) 2016/865****of 31 May 2016****initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Implementing Regulation (EU) 2015/2384 on imports of certain aluminium foil originating in the People's Republic of China by imports of slightly modified certain aluminium foil from the People's Republic of China, and making such imports subject to registration**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup> ('the basic Regulation') and in particular Articles 13(3) and 14(5) thereof,

After having informed the Member States,

Whereas:

**A. REQUEST**

- (1) The European Commission ('the Commission') has 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 certain aluminium foil originating in the People's Republic of China ('the PRC') by imports of slightly modified certain aluminium foil from the PRC, and to make such imports subject to registration.
- (2) The request was lodged on 18 April 2015. The applicant has requested anonymity and duly substantiated it in the request. The Commission considers that there are sufficient grounds to grant the confidentiality of the applicant's identity.

**B. PRODUCT**

- (3) The product concerned by the possible circumvention is aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg, originating in the PRC, currently falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 10) ('the product concerned'). This is the product to which the measures currently in force apply.
- (4) The products under investigation for possible circumvention have the same essential characteristics as the product concerned defined in the previous recital. However, they can be annealed or not, and are also presented at importation as:
  - aluminium foil of a thickness of not less than 0,007 mm and less than 0,008 mm, regardless of the width of the rolls, or
  - aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm and in rolls of a width exceeding 650 mm, or

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

- aluminium foil of a thickness of more than 0,018 mm and less than 0,021 mm, regardless of the width of the rolls, or
  - aluminium foil of a thickness of not less than 0,021 mm and not more than 0,045 mm, when presented with at least two layers, regardless of the width of the rolls.
- (5) The first three products described above currently fall within the same CN code as the product concerned but under different TARIC codes (7607 11 19 30, 7607 11 19 40 and 7607 11 19 50).
- (6) The last one falls in a different CN code from the product concerned (i.e. CN code ex 7607 11 90) and TARIC codes 7607 11 90 45 and 7607 11 90 80.
- (7) All the products described above also originate in the PRC ('the products under investigation').

#### C. EXISTING MEASURES

- (8) The measures currently in force and possibly being circumvented are anti-dumping measures imposed by Commission Implementing Regulation (EU) 2015/2384 <sup>(1)</sup> ('the existing measures').

#### D. GROUNDS

- (9) The request contains sufficient *prima facie* evidence that the anti-dumping measures imposed on the product concerned are being circumvented by means of practices, processes or work for which there is insufficient due cause or economic justification other than the imposition of the anti-dumping duty.
- (10) The *prima facie* evidence submitted is as follows:
- (11) Based on Chinese export statistics and Eurostat import statistics, the applicant determined the evolution of imports of each of the slightly modified products under investigation for a period starting in 2008 and ending in 2015. By comparing the evolution of imports of the product concerned with that of imports of the slightly modified products under investigation, the applicant evidenced a strong growth of imports of slightly modified product under investigation, as well as a parallel decrease of imports of the product concerned. In particular, the applicant showed that the volumes of imports of the slightly modified products under investigation were similar to those of the product concerned prior to the adoption of the initial anti-dumping measures by Council Regulation (EC) No 925/2009 <sup>(2)</sup>. Hence, the applicant demonstrated a change in the pattern of trade.
- (12) Moreover, for each of the circumvention practices, the applicant provided detailed evidence on the widespread existence of such practices and the absence of any due cause or economic justification other than the imposition of the duty for such practices.
- (13) Based on the information available, the applicant demonstrated that the export prices of the slightly modified products under investigation originating in the PRC, under each of the circumvention practices, significantly undercut and undersell prices of the Union industry. Consequently, imports of the slightly modified product under investigation originating in the PRC undermine the remedial effects of the antidumping measures in terms of prices, as well as quantities.

<sup>(1)</sup> Commission Implementing Regulation (EU) 2015/2384 of 17 December 2015 imposing a definitive anti-dumping duty on imports of certain aluminium foils originating in the People's Republic of China and terminating the proceeding for imports of certain aluminium foils originating in Brazil following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 332, 18.12.2015, p. 63).

<sup>(2)</sup> Council Regulation (EC) No 925/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China (OJ L 262, 6.10.2009, p. 1).

- (14) Finally, based on the information reasonably available to it, the applicant established dumping margin calculations showing that the slightly modified products under investigation, under each of the circumvention practices, enter the Union market at dumped prices.

#### E. PROCEDURE

- (15) In light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13(3) of the basic Regulation and to make imports of the products under investigation subject to registration, in accordance with Article 14(5) of the basic Regulation.

##### (a) Questionnaires

- (16) In order to obtain information it deems necessary for its investigation, the Commission will send questionnaires to the known exporters/producers and to the known associations of exporters/producers in the PRC, to the known importers and to the known associations of importers in the Union and to the authorities of the PRC. Information, as appropriate, may also be sought from the Union industry.
- (17) In any event, all interested parties should contact the Commission, but not later than the time limit set in Article 3 of this Regulation, and request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.
- (18) The authorities of the PRC will be notified of the initiation of the investigation.

##### (b) Collection of information and holding of hearings

- (19) All interested parties are invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

##### (c) Exemption from registration of imports or measures

- (20) In accordance with Article 13(4) of the basic Regulation, imports of the products under investigation may be exempted from registration or measures if the importation does not constitute circumvention.
- (21) Since the possible circumvention may take place outside the Union, exemptions may be granted, in accordance with Article 13(4) of the basic Regulation, to producers of the products under investigation in the PRC that can show that they are not related <sup>(1)</sup> to any producer subject to the measures <sup>(2)</sup> and that are found not to be

<sup>(1)</sup> In accordance with Article 127 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558), two persons shall be deemed to be related if one of the following conditions is fulfilled: (a) they are officers or directors of the other person's business; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) a third party directly or indirectly owns or 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 control a third person directly or indirectly; (h) they are members of the same family. In accordance with Article 5(4) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1), 'person' means a natural person, a legal person, and any association of persons which is not a legal person but which is recognised under Union or national law as having the capacity to perform legal acts.

<sup>(2)</sup> However, even if producers are related in the aforementioned sense to companies subject to the measures in place on imports originating in the People's Republic of China, an exemption may still be granted if there is no evidence that the relationship with the companies subject to the original measures was established or used to circumvent the original measures.

engaged in circumvention practices as defined in Articles 13(1) and 13(2) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time limit indicated in Article 3(3) of this Regulation.

#### F. REGISTRATION

- (22) Pursuant to Article 14(5) of the basic Regulation, imports of the products under investigation shall be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied from the date on which registration of such imports was imposed.

#### G. TIME LIMITS

- (23) In the interest of sound administration, time limits should be stated within which:
- interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,
  - producers in the PRC may request exemption from registration of imports or measures,
  - interested parties may make a written request to be heard by the Commission.
- (24) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time limits laid down in Article 3 of this Regulation.

#### H. NON-COOPERATION

- (25) In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.
- (26) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available.
- (27) If an interested party does not cooperate or cooperates only partially and findings are therefore based on the facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.
- (28) Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. The interested party should immediately contact the Commission.

#### I. SCHEDULE OF THE INVESTIGATION

- (29) The investigation will be concluded, pursuant to Article 13(3) of the basic Regulation, within nine months of the date the date of entry into force of this Regulation.

**J. PROCESSING OF PERSONAL DATA**

- (30) It is noted that 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 <sup>(1)</sup>.

**K. HEARING OFFICER**

- (31) Interested parties may request the intervention of the Hearing Officer in trade proceedings. 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 regarding 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.
- (32) A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. 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.
- (33) 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/trade-policy-and-you/contacts/hearing-officer/>

HAS ADOPTED THIS REGULATION:

*Article 1*

An investigation is initiated pursuant to Article 13(3) of Regulation (EC) No 1225/2009, in order to determine if imports into the Union of:

- aluminium foil of a thickness of not less than 0,007 mm and less than 0,008 mm, not backed, not further worked than rolled, in rolls, of a weight exceeding 10 kg, regardless of the width, whether or not annealed, or
- aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls, of a weight exceeding 10 kg and of a width exceeding 650 mm, whether or not annealed, or
- aluminium foil of a thickness of more than 0,018 mm and less than 0,021 mm, not backed, not further worked than rolled, in rolls, of a weight exceeding 10 kg, regardless of the width, whether or not annealed, or
- aluminium foil of a thickness of not less than 0,021 mm and not more than 0,045 mm, not backed, not further worked than rolled, in rolls, of a weight exceeding 10 kg, regardless of the width, whether or not annealed, when presented with at least two layers,

originating in the People's Republic of China, currently falling within CN codes ex 7607 11 19 (TARIC codes 7607 11 19 30, 7607 11 19 40 and 7607 11 19 50) and ex 7607 11 90 (TARIC codes 7607 11 90 45 and 7607 11 90 80) are circumventing the measures imposed by Implementing Regulation (EU) 2015/2384.

<sup>(1)</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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 (OJ L 8, 12.1.2001, p. 1).

### Article 2

The customs authorities shall, pursuant to Article 13(3) and Article 14(5) of Regulation (EC) No 1225/2009, take the appropriate steps to register the imports into the Union identified in Article 1 of this Regulation.

Registration shall expire nine months following the date of entry into force of this Regulation.

The Commission, by regulation, may direct customs authorities to cease registration in respect of imports into the Union of products manufactured by producers having applied for an exemption from registration and having been found to fulfil the conditions for an exemption to be granted.

### Article 3

1. Questionnaires must be requested from the Commission within 15 days from the date of entry into force of this Regulation.
2. Interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views in writing and submit questionnaire replies or any other information within 37 days from the date of entry into force of this Regulation, unless otherwise specified.
3. Producers in the People's Republic of China requesting exemption from registration of imports or measures must submit a request duly supported by evidence within the same 37-day time limit.
4. Interested parties may also apply to be heard by the Commission within the same 37-day time limit.
5. Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing (a) the Commission to use the information and data for the purpose of this trade defence proceeding; and (b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their right of defence.
6. All written submissions, including the information requested in this Regulation, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled '*Limited*'<sup>(1)</sup>.
7. Interested parties providing '*Limited*' information are required to furnish non-confidential summaries of it pursuant to Article 19(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 information may be disregarded.
8. Interested parties are invited to make all submissions and requests by e-mail including scanned powers of attorney and certification sheets, with the exception of voluminous replies which shall be submitted on a CD-ROM or DVD by hand or by registered mail. By using email, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN

<sup>(1)</sup> A '*Limited*' document is a document which is considered confidential pursuant to Article 19 of Council Regulation (EC) No 1225/2009 (OJ L 343, 22.12.2009, p. 51) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). 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).

TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: [http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc\\_148003.pdf](http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf) The interested parties must indicate their name, address, telephone and a valid e-mail address and they should ensure that the provided e-mail address is a functioning official business e-mail which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by email only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by email, interested parties should consult the communication instructions with interested parties referred to above.

Commission address for correspondence:

European Commission

Directorate-General for Trade

Directorate H

Office: CHAR 04/039

1040 Bruxelles/Brussel

BELGIQUE/BELGIË

E-mail: TRADE-AC-ALU-FOIL@ec.europa.eu

#### *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, 31 May 2016.

*For the Commission*

*The President*

Jean-Claude JUNCKER

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