

COMMISSION IMPLEMENTING REGULATION (EU) 2017/271**of 16 February 2017****extending the definitive anti-dumping duty imposed by Council Regulation (EC) No 925/2009 on imports of certain aluminium foil originating in the People's Republic of China to imports of slightly modified certain aluminium foil**

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 13(3) thereof,

Whereas:

1. PROCEDURE**1.1. Existing measures**

- (1) By Regulation (EC) No 925/2009 ⁽²⁾ ('the original Regulation'), the Council imposed a definitive anti-dumping duty of 30,0 % on imports of 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 ('the product concerned') from the People's Republic of China ('the PRC' or 'China') for all other companies than the ones mentioned in Article 1(2) of that Regulation.
- (2) In December 2015, the measures on the same product were extended by Commission Implementing Regulation (EU) 2015/2384 ⁽³⁾ ('the expiry review').
- (3) These measures will hereinafter be referred to as 'the measures in force' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

1.2. Initiation following a request

- (4) On 18 April 2016, the European Commission ('the Commission') received a request indicating that the measures in force on imports of certain aluminium foil are being circumvented by imports of slightly modified products concerned from the PRC.
- (5) The applicant has requested anonymity on the grounds of a threat of commercial retaliation. The Commission considered the request substantiated and agreed to keep the applicant's identity confidential.
- (6) The request provided prima facie evidence that, following the imposition of the measures in force, a significant change in the pattern of trade involving exports from the PRC to the Union occurred, which seemed to have been caused by the imposition of the measures in force. There was allegedly insufficient due cause or justification other than the imposition of the measures in force for such a change.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ 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).

⁽³⁾ 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).

- (7) Furthermore, the evidence on file pointed to the fact that the remedial effects of the measures in force were being undermined both in terms of quantity and price. The evidence showed that the increased imports of the slightly modified product were made at prices below the non-injurious price established in the original investigation.
- (8) Finally, there was prima facie evidence that the slightly modified products were dumped in relation to the normal value established for the like product, i.e. the product produced by the Union industry which has the same technical and physical characteristics as the product concerned, during the original investigation.
- (9) After having informed the Member States, the Commission determined that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation. It thus initiated the present investigation by Commission Implementing Regulation (EU) 2016/865 ⁽¹⁾ ('the initiating Regulation'). Pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission, by the initiating Regulation, also directed the customs authorities to register imports of slightly modified product concerned from the PRC.

1.3. Investigation

- (10) The Commission duly informed the authorities of the PRC, the exporting producers and traders in the PRC, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation.
- (11) Exemption forms were sent to the exporting producers in the PRC and to the known importers in the Union.
- (12) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being based on facts available.
- (13) Five groups of companies from the PRC and 19 companies from the Union, including the Union industry and unrelated importers, made themselves known.
- (14) Five groups of companies from the PRC and five unrelated importers submitted a questionnaire reply and requested an exemption from the possible extended measures in accordance with Article 13(4) of the basic Regulation.
- (15) The following exporting producers submitted complete replies to the questionnaires and verification visits were subsequently carried out at their premises.

— Dingsheng Aluminium Group

— Jiangsu Zhongji Lamination Materials Co., Ltd

— Luoyang Wanji Aluminium Processing Co., Ltd

— Xiamen Xiashun Aluminium Foil Co., Ltd

— Yantai Donghai Aluminum Foil Co., Ltd

- (16) The following five Union unrelated importers submitted complete replies to the questionnaires:

— Coutinho Caro + Co. International Trading GmbH

— Huhtamaki Flexible Packaging Germany GmbH & Co. KG

⁽¹⁾ 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 (OJ L 144, 1.6.2016, p. 35).

- Now Plastics UK Inc. (Milano Branch)
 - Von Aschenbach & Voss GmbH
 - Wrap Films Systems Ltd
- (17) One of the unrelated importers, the company Wrap Films Systems Ltd, subsequently ceased cooperation.
- (18) Verification visits were carried out at the premises of the following unrelated importers.
- Coutinho Caro + Co. International Trading GmbH
 - Von Aschenbach & Voss GmbH
- (19) The company Cellofix S.L. made submissions and requested a hearing as an interested party.
- (20) Hearings took place between the Commission and the applicant, and between the Commission and the following companies: Cellofix S.L., Now Plastics Inc. and Von Aschenbach & Voss GmbH.
- (21) Following the disclosure another hearing between the Commission and the applicant took place, after which the Commission redisclosed its intention to extend the measures under the mechanism of end-use procedure in accordance with Article 254 of Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽¹⁾ ('the Union Customs Code').

1.4. Investigation period and reporting period

- (22) The investigation period covered the period from 1 April 2012 to 31 March 2016. Data was collected for the investigation period as well as for all years since 2009 (when the measures in force were imposed) to investigate, inter alia, the alleged change in the pattern of trade. For the period 1 April 2015 to 31 March 2016 ('the reporting period') more detailed data were collected in order to examine the possible undermining of the remedial effect of the measures in force and existence of dumping.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

- (23) In accordance with Article 13(1) of the basic Regulation, the Commission analysed successively whether there was a change in the pattern of trade between third countries and the Union; whether this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty; whether there was evidence of injury or that the remedial effects of the duty were being undermined in terms of the prices and/or quantities of the like product; and whether there was evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2.2. Product concerned

- (24) The product concerned by the possible circumvention is the product subject to the measures in force, as described above in recital 1. It falls within CN code ex 7607 11 19 (TARIC code 7607 11 19 10). As established by the original investigation this particular type of aluminium foil is transformed into a consumer product, household aluminium foil ('AHF') used for packing and other household application.

⁽¹⁾ 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).

2.3. Product under investigation

- (25) The product under investigation for circumvention has the same essential characteristics as the product concerned. However, it can be annealed or not.
- (26) The product under investigation was defined in the initiation Regulation as follows:
- 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, whether or not annealed, 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, whether or not annealed, or
 - aluminium foil of a thickness of more than 0,018 mm and less than 0,021 mm, regardless of the width of the rolls, whether or not annealed, 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, whether or not annealed,
- (27) The first three products described above currently fall within CN code ex 7607 11 19 (TARIC codes 7607 11 19 30, 7607 11 19 40 and 7607 11 19 50). The fourth product described above falls within CN code ex 7607 11 90 (TARIC codes 7607 11 90 45 and 7607 11 90 80).
- (28) In the original investigation the Commission had established that aluminium converter foil (‘ACF’) was not the product concerned ⁽¹⁾. The two products — AHF and ACF — have different use. ACF is used by converter industries that laminate, coat, lacquer and otherwise process and integrate it into products that are used in fields such as packaging for food, medicine, cosmetics, and tobacco or in insulation materials for the construction sector. In December 2014 the Commission initiated an anti-dumping investigation on ACF ⁽²⁾. The request was withdrawn by the applicant and the measures on ACF were not imposed ⁽³⁾. For the above mentioned reasons the Commission found it appropriate to exclude ACF from the scope of this investigation.
- (29) After disclosure, the applicant argued that the ACF and AHF were interchangeable. The Commission considered however that this argument did not put into question the uncontested definition of the product concerned established in the original investigation.
- (30) In the investigation the Commission found however that the definition of the product under investigation comprised not only the slightly modified product concerned but could also include ACF. The five cooperating exporting producers exported ACF to the Union during the reporting period (see recital 74 below). It was thus decided to take account of the end use when designing the measures (see recitals 58 to 69).
- (31) Following the disclosure one of the non-cooperating importers claimed that the Commission should have taken into consideration its suggestion to exclude non-annealed jumbo reels from the scope of the investigation.
- (32) Since the company did not cooperate with the investigation, the Commission was not able to verify this claim. No facts available lead to the conclusion that non-annealed jumbo reels should be excluded from the scope of this investigation. Therefore the Commission rejected this claim

2.4. Degree of cooperation

- (33) There was a low level of cooperation by exporting producers in the PRC; only five groups of Chinese exporting producers came forward and requested an exemption from any possible extension of the measures in force representing around 22 % of the Chinese exports to the Union during the reporting period.

⁽¹⁾ Recital 89 of Commission Regulation (EC) No 287/2009 of 7 April 2009 imposing a provisional anti-dumping duty on imports of certain aluminium foil originating in Armenia, Brazil and the People’s Republic of China (OJ L 94, 8.4.2009, p. 17).

⁽²⁾ OJ C 444, 12.12.2014, p. 13.

⁽³⁾ Commission Implementing Decision (EU) 2015/1928 of 23 October 2015 terminating the anti-dumping proceeding concerning imports of certain aluminium foil originating in the People’s Republic of China (OJ L 281, 27.10.2015, p. 16).

- (34) The exports of non-cooperating exporters were estimated at around 78 % of the total Chinese exports to the Union during the same period. Hence, for those exports the Commission used best facts available in accordance with Article 18 of the basic Regulation.

2.5. Change in the pattern of trade

- (35) In order to establish the change in the pattern of trade the Commission analysed the volume of imports of the product concerned and the volume of imports of the slightly modified product concerned for the period between the imposition of the original measures (2009) until September 2016.
- (36) The investigation found that 80 % of the total volume of imports of the product under investigation originating in the PRC was the slightly modified product concerned for the reporting period ⁽¹⁾. This ratio was then extrapolated for the years concerned since 2009.
- (37) The volume of imports of the product concerned was established on the basis of Eurostat for the period between 2009 and reporting period.
- (38) The table below compiles the information collected.

Table 1

Imports product concerned and slightly modified product concerned from the PRC into the EU

(Unit: tonnes)

	IP of the original investigation July 2007 to June 2008	2009	2010	2011	2012	2013	2014	RP
Product concerned	30 318	150	1 442	3 094	1 165	1 369	1 553	1 152
Slightly modified product		11 393	17 115	30 960	25 648	30 962	42 578	44 522

Source: Eurostat, Chinese cooperating exporting producers

- (39) The total volume of imports of the product concerned from the PRC fell from 30 318 tonnes during IP of the original investigation (July 2007 to June 2008) to 1 152 tonnes during the reporting period of this investigation. In contrast, imports of the slightly modified product concerned increased from 11 393 tonnes in 2009 to 44 522 tonnes during the reporting period of this investigation.
- (40) The increase of imports of the slightly modified product concerned as well as the parallel disappearance of imports of the product concerned since imposition of measures, constitute a significant change in the pattern of trade, as required by Article 13(1) of the basic Regulation.
- (41) After disclosure one of the non-cooperating importers claimed that the Commission used an erroneous methodology to determine the change in the pattern of trade. More specifically, it questioned the assumption that sales of non-cooperating exporting producers during the reporting period were sales of the slightly modified product.

⁽¹⁾ In order to establish the volume of the slightly modified product concerned within the product under investigation for the reporting period the Commission used the following methodology. Firstly, the Commission established the total volume of exports of the product under investigation from China on the basis of Eurostat. Secondly, from the verified questionnaire replies of the cooperating Chinese exporting producers, the Commission established the volume of the exports of ACF of the five cooperating companies. Thirdly, the Commission deducted the volume of exports of ACF made by the cooperating companies from the total exports from China. Given the very high level of non-cooperation, the Commission considered that it has a sufficient basis to assume that the non-cooperating companies are exporting the slightly modified product. On this basis, the Commission concluded that 80 % of the total exports from China are made of the exports of the slightly modified products and the 20 % are the exports of ACF. The Commission applied this ratio to establish the change of the pattern of trade.

- (42) The Commission reiterated that it based itself on the facts available when establishing the volume of imports of the slightly modified product. Given the very low level of cooperation, in light of the information contained in the request and in absence of any other information to the contrary, the Commission could reasonably conclude that the non-cooperating companies were exporting the slightly modified product. Therefore the methodology used to establish the change in the pattern of trade was confirmed.

2.6. Existence of circumvention practices

- (43) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes, inter alia, the slight modification of the product concerned.
- (44) The activities of the cooperating exporting producers were analysed. This analysis confirmed the existence of the four circumvention practices.
- (45) For the four circumvention practices, evidence took form of emails from the Chinese exporting producers advising customers on how the current measures could be circumvented. The different pieces of evidence also contained information that such practices have been actually put in place by some of the Union importers/users.
- (46) The Commission also found supporting evidence when verifying one of the cooperating Chinese producers, namely Dingsheng Aluminium Group. In the period since the imposition of the duties in 2009, Dingsheng Aluminium Group exported to the Union AHF thinner than the product concerned, i.e. AHF having the thickness less than 0,008 mm and not less than 0,007 mm. The same exporting producer also exported to the Union AHF thicker than the product concerned, i.e. AHF more than 0,018 mm and less than 0,021 mm. Evidence in form of emails from other exporting producers also confirmed that such a practice exists.
- (47) Furthermore, in the same period, Dingsheng Aluminium Group sold to the Union AHF in rolls wider than 650 mm. These rolls were subsequently slit in the Union into smaller rolls. When verifying one of the cooperating importers, the Commission found that this importer, namely the company Von Aschenbach & Voss GmbH, slits in the Union wider rolls into consumer rolls.
- (48) Concerning the imports into the Union of the aluminium foil of a thickness between 0,021 mm and 0,045 mm and presented in double layers, the Commission had evidence in the file in the form of emails exchanged between Chinese exporting producers, including from Dingsheng Aluminium Group, and the Union producers. The Commission also established that some of the Union producers own machines used to de-double the foil to standard thicknesses allowing its use as AHF.
- (49) On the basis of the findings with regard to the cooperating exporting producers and on the basis of the facts available for the non-cooperating exporting producers, the existence of a circumvention practice within the meaning of Article 13(1) of the basic Regulation is established at a country level for 80 % all imports of the product under investigation from the PRC. This circumvention practice takes the form of a slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures, namely the product under investigation.

2.7. Undermining the remedial effects of the duty in terms of the prices and/or the quantities of the like product

- (50) The increase of imports of the slightly modified product concerned was significant as explained in recital 36 above and represented around 80 % of the total volume of imports of the product under investigation for the period between 2009 and the reporting period.
- (51) The Commission compared the export price of the slightly modified product concerned with the injury elimination level as established in Implementing Regulation (EU) 2015/2384 imposing a definitive duty following an expiry review pursuant to Article 11(2) of the basic Regulation.
- (52) As regards the cooperating exporting producer engaging in circumvention practices, the export price was determined on the basis of the information verified during the investigation. For the non-cooperating exporting producers, the export price was established on the basis of Eurostat data, after deduction of the volume of exports made by the cooperating exporting producers.

- (53) This comparison showed significant price underselling.
- (54) It is therefore considered that the remedial effects of the measures in force are being undermined both in terms of quantities and prices.

2.8. Evidence of dumping in relation to the normal value previously established for the like product

- (55) In accordance with Article 13(1) of the basic Regulation and to establish whether export prices of the product under investigation were dumped, export prices of both the cooperating exporting producer engaging in circumvention practices and of non-cooperating exporting producers were determined as described in recitals 51 and 52 above and compared to the normal value established during the expiry review investigation mentioned in recital 51 and duly adjusted to London Metal Exchange (LME) fluctuations. This adjustment was necessary due to the fact that prices of aluminium products refer to price fluctuations of the basic raw material, primary aluminium. LME prices are considered as the global benchmark for primary aluminium.
- (56) The comparison of normal value and export price shows that AHF is imported at dumped prices to the Union during the reporting period by both the cooperating exporting producer engaging in circumvention practices and the non-cooperating exporting producers.

2.9. Conclusion

- (57) Based on the findings above the Commission concluded that duties on imports of the product concerned as defined in the original investigation were circumvented by imports of slightly modified product concerned originating in the PRC.
- (58) The investigation also showed that there was a change in the pattern of trade between the PRC and the Union, and that there was insufficient due cause or economic justification for this change other than the imposition of the duty.
- (59) The Commission also found that these imports cause injury and that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product. Evidence of dumping in relation to the normal values previously established for the like product was also found.

3. MEASURES

- (60) In view of the findings above, the Commission concluded that the definitive anti-dumping duty imposed on imports of the product concerned originating in the PRC is circumvented by imports of the product under investigation originating in the PRC.
- (61) However, based on the above mentioned findings, it was concluded that aluminium converter foil must be excluded from the scope of the extended measures.
- (62) In order to establish how a distinction can be made between AHF and ACF, the Commission first relied on extra criteria, additional to the thickness of the aluminium foil and the width of the rolls.
- (63) The Commission considered that a cumulative analysis of a set of characteristics can lead to the desired distinction: alloys, wettability and pinholes of the aluminium foil.
- (64) Aluminium alloy is determined by the chemical composition of the product (content of actual aluminium and other chemicals). Based on submissions from interested parties and on information collected during verification visits, the investigation found that ACF is generally produced using aluminium alloys 1235, 8011 and 8079.
- (65) Wettability grade is defined as the degree of dryness (surface cleanliness) of the aluminium foil from the oil that is used during the rolling process. Wettability for ACF is generally of degree A, as any residue of oil in the surface would entail problems in printing and lamination.

- (66) Pinholes appear in the texture of the aluminium foil during the process of rolling down. The number of pinholes in sales of AHF is generally not important and not a part of product specifications. The number of pinholes is important for ACF products because during the lamination process adhesive can penetrate from one side of the foil layer to the other side via the pinholes and thus damage the packaging material. The Commission found that the maximum number of pinholes in ACF generally relates to the thickness of the foil. The maximum number of pinholes per m² in relation to the thickness of the foil is as follows.

Table 2

Maximum number of pinholes per m² in relation to the thickness of the foil

Thickness (Microns)	Number of Pinholes per m ²
7	400
8	300
9	200
10	100
up to 13	40
up to 15	10
up to 19	5
more than 20	None

Source: Chinese cooperating exporting producers, EU unrelated importers.

- (67) These criteria were based on findings of the investigation and submissions by third parties.
- (68) The applicant maintained and reiterated after disclosure that no workable dividing line could be drawn based on the above criteria and hence this would have created a disproportionate risk of circumvention. It argued that aluminium foils were interchangeable and that some AHF might be produced using the same aluminium foils as it was generally used to produce ACF. In particular it pointed to the alloys 8011 and 8079. Regarding the number of pinholes the applicant submitted that these were not a regulated requirement and generally based on an agreement between seller and buyer. Regarding the wettability criterion the applicant also argued that it was not a decisive factor to determine whether an aluminium foil was ACF. During the hearing after disclosure it also argued that even the cumulative application of the three criteria was not workable to establish the desired distinction. Even if all the three criteria for ACF were fulfilled, imports could still be used as household foil and distort competition. In the applicant's opinion the only way to differentiate between AHF and ACF was by its end-use. Following the additional disclosure the applicant submitted that the exporting producers exempted in accordance with Article 13(4) of the basic Regulation should be subject to end-use procedure in accordance with Article 254 of the Union Customs Code in order to prevent any future circumvention of the measures.
- (69) One of the cooperating exporting producers also argued that the criteria proposed by the Commission to distinguish ACF from AHF were not commonly and widely accepted by the aluminium industry. It argued that this would open the door for circumvention of the extended anti-dumping duties and lead to a significant decrease in the average price of ACF, which could lead to another anti-dumping complaint.
- (70) After the additional disclosure an importer maintained its view that a distinction was indeed possible and sufficient based on an additional cumulative analysis of the three characteristics alloys, wettability and pinholes.
- (71) In response to these arguments, the Commission first recalled that anti-circumvention measures may not legally be imposed on the basis of the mere risk of circumvention, but only if the conditions set by Article 13 of the Basic Regulation were met. Therefore the applicant's request to make the exempted exporting producers subject to end-use control was rejected.

- (72) Following the initial and additional disclosure the Commission further assessed its initial approach detailed in recitals 62 and 66 above and the arguments submitted by the importer stated in recital 70. The Commission maintained its conclusion that due to their similar characteristics it cannot be excluded that ACF meeting the technical requirements stated in recitals 61 and 67 would in fact be actually used for household applications. Therefore it concluded that, given the specific circumstances of the case, the most appropriate way to differentiate between the two products for the purpose of extending the original measure is by their end-use. Accordingly, the importers which do not use the imported aluminium foil for household applications will have the possibility to make a declaration subject to end-use procedure in accordance with Article 254 of the Union Customs Code.

4. REQUESTS FOR EXEMPTION

4.1. Request for exemption by groups of exporting producers

- (73) In accordance with Article 13(4) of the basic Regulation five cooperating groups of exporting producers from the PRC requested to be exempted from the possible extended measures and submitted an exemption request.
- (74) The investigation found that four groups of Chinese exporting producers were exporting only ACF to the Union and not the slightly modified aluminium household foil. Therefore, these groups of Chinese exporting producers were found not to circumvent the current duties. The Commission thus considered that these companies could be granted an exemption from the extended duties under Article 13(4) of the basic Regulation.
- (75) The investigation also revealed that one cooperating producer, the Dingsheng Aluminium Group, was involved in all types of circumvention practices, except for one, namely it did not export to the Union 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.
- (76) The conclusion that this company was involved in three circumvention practices was reached on the basis of several factors. First, the Commission identified the slightly modified products that it exported to the Union based on the information provided by the company with regards to its sales of AHF and ACF to its customers. Second, a sample of invoices related to the AHF and ACF customers was verified. This exercise confirmed that the products sold to customers indicated as AHF were indeed either the product concerned or the slight modified AHF. As a result, the Commission found that the circumvented slightly modified AHF constituted 20 % of all exports of the product under investigation, while the rest was genuine ACF for this company. Third, a clear change in pattern of trade was found for this company whereby the exports of the product concerned had been replaced by the slightly modified product. Fourth, no economic justification other than the imposition of the measures for this change in pattern of trade was found. Fifth, both dumping and undermining the remedial effect of the duties were found with respect to the slightly modified products exported by this exporting producer.
- (77) In light of the above, under Article 13(4) of the basic Regulation, an exemption to the Dingsheng Aluminium Group could not be granted.
- (78) Following the disclosure the applicant claimed that no exemption from the scope of extended measures should be granted to Chinese exporting producers.
- (79) It argued that the Commission could not have verified that the exempted Chinese exporting producers actually exported ACF, as this was not mentioned in the questionnaires. Moreover, it stated that the circumvention practice would take place in the Union. Under these circumstances exemption could not be granted to exporters as a matter of law.
- (80) The Commission visited the exporting producers on the spot and verified, inter alia, the technical characteristics and end uses of the product under investigation sold to the Union. Hence, it concluded from the verification visits that the product exported by the four exporting producers was effectively ACF, that is, a product not covered by this investigation. The Commission also observed that the slight modification of the product took place in China, namely at the premises of one of the cooperating producers and — based on the facts available — at the premises of non-cooperating producers. Hence it was possible and indeed necessary to grant an exemption to those who have not engaged in any form of circumvention practices in China and meet the conditions of Article 13(4) of the Basic Regulation. Consequently the claim was rejected.

4.2. Request for exemption by unrelated importers

- (81) When the circumvention practice takes place within the Union, Article 13(4) of the basic Regulation allows importers to be exempted from the extended duties, if they can show that they are not related to producers subject to measures.
- (82) On these grounds, five exemption requests by unrelated importers were received and examined. One of the companies, Wrap Films Systems Ltd, subsequently ceased cooperation.
- (83) The Commission found that, although in some cases the final completion (slitting of the foil into smaller rolls) takes place in the Union, the slight modification of the product concerned as such takes place outside the Union, namely in the PRC. On these grounds the Commission considered that exemptions might not be granted to the unrelated importers.
- (84) For three of the four cooperating companies it was found that they were genuine importers reselling the product under investigation without processing it. Therefore these companies cannot be exempted from the extended duties under Article 13(4) of the basic Regulation. Only one of the companies, the company Von Aschenbach & Voss GmbH, imports from the PRC the product under investigation in the form of aluminium household foil in rolls exceeding 650 mm and further processes it. The foil is slit before it is sold to the company's customers (rewinders).
- (85) Before imposition of the existing measures, the company Von Aschenbach & Voss imported into the Union the product concerned, and a clear change of pattern was found. The Commission's findings do not support the company's view on an existence of a due cause or economic justification, other than imposition of the duties. Therefore even if the Commission were to accept that this justified that the circumvention practice was completed within the Union, an exemption to this company could not be granted.
- (86) Therefore, it was concluded that none of the unrelated importers may be exempted under Article 13(4) of the basic Regulation.

4.3. Conclusion

- (87) Based on the above mentioned findings it was concluded that the four of the five cooperating groups of the Chinese exporting producers could be exempted from the extended duties. It was also found that one of the Chinese exporting producers, the Dingsheng Aluminium Group, cannot be exempted.
- (88) It was also concluded that none of the unrelated importers may be exempted under Article 13(4) of the basic Regulation.

5. CONCLUSION

- (89) In accordance with the first sentence of Article 13(1) of the basic Regulation, the existing anti-dumping measures on imports of the product concerned originating in the PRC should be extended to imports of the product under investigation originating in the PRC.
- (90) Pursuant to Articles 13(3) and 14(5) of the basic Regulation, which provide that any extended measures should apply to imports which entered the Union under registration imposed by the initiating Regulation, the anti-dumping duty should be collected on those imports into the Union of
- 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, whether or not annealed, 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, whether or not annealed, or
 - aluminium foil of a thickness of more than 0,018 mm and less than 0,021 mm, regardless of the width of the rolls, whether or not annealed, 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 whether or not annealed,

originating in the PRC.

- (91) The product described in recital 90 should be exempted from the extended anti-dumping duty if it is imported for other uses than the use of household foil. Such an exemption should be subject to the conditions laid down in the relevant customs provisions of the Union on the end-use procedure, in particular Article 254 of the Union Customs Code.

6. DISCLOSURE

- (92) All interested parties were informed of the essential facts and considerations leading to the above conclusions and were invited to comment. Such comments were addressed in this Regulation.
- (93) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty applicable to 'all other companies' imposed by Article 1(2) of Regulation (EC) No 925/2009 on imports of certain aluminium foil originating in the People's Republic of China is hereby extended to imports into the Union of:

- 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, whether or not annealed, currently falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 30) 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, whether or not annealed, currently falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 40), or
- aluminium foil of a thickness of more than 0,018 mm and less than 0,021 mm, regardless of the width of the rolls, whether or not annealed, currently falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 50), 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, whether or not annealed, currently falling within CN code ex 7607 11 90 (TARIC codes 7607 11 90 45 and 7607 11 90 80).

2. This extension does not apply to imports referred to in paragraph 1 of this Article produced by the companies listed below:

Company name	TARIC additional code
Jiangsu Zhongji Lamination Materials Co., Ltd	C198
Luoyang Wanji Aluminium Processing Co., Ltd	C199
Xiamen Xiashun Aluminium Foil Co., Ltd	C200
Yantai Donghai Aluminum Foil Co., Ltd	C201

3. The application of exemptions granted to the companies specifically mentioned in paragraph 2 of this Article shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice issued by the producer on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function. This declaration shall be drafted as follows: 'I, the undersigned, certify that the (volume) of certain aluminium foil sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the anti-dumping duty as imposed by paragraph 1 of this Article shall apply.
4. The product described in paragraph 1 shall be exempted from definitive anti-dumping duty if it is imported for other uses than the use of household foil. An exemption shall be subject to the conditions laid down in the relevant customs provisions of the Union on the end-use procedure, in particular Article 254 of the Union Customs Code.
5. The duty extended by paragraph 1 on this Article shall be collected on imports originating in the People's Republic of China, registered in accordance with Article 2 of Implementing Regulation (EU) 2016/865 and with Articles 13(3) and 14(5) of Regulation (EU) 2016/1036, with the exception of those produced by the companies listed in paragraph 2 of this Article and with the exemption of those which can demonstrate that they were used for other uses than household foil in accordance with paragraph 4.
6. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate H
Office: CHAR 04/039
1049 Brussels
Belgium

2. In accordance with Article 13(4) of Regulation (EU) 2016/1036, the Commission may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Implementing Regulation (EU) 2015/2384, from the duty extended by Article 1 of this Regulation.

Article 3

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Implementing Regulation (EU) 2016/865.

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, 16 February 2017.

For the Commission

The President

Jean-Claude JUNCKER
