

COMMISSION IMPLEMENTING REGULATION (EU) 2021/1053

of 25 June 2021

repealing the definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China imposed by Implementing Regulation (EU) 2015/2272

THE EUROPEAN COMMISSION,

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⁾, and in particular Article 14(1) thereof,

Whereas:

- (1) Following an anti-dumping investigation in accordance with Article 5 of Council Regulation (EC) No 1225/2009 ⁽²⁾, on 6 October 2009, pursuant to Council Regulation (EC) No 926/2009 ⁽³⁾, a definitive anti-dumping duty was imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China. The measures took the form *ad valorem* duty rates: 17,7 % for Shandong Luxing Steel Pipe Co. Ltd; 27,2 % for other cooperating companies and 39,2 % for all other companies.
- (2) Following an expiry review investigation in accordance with Article 11(2) of Regulation (EC) No 1225/2009, on 8 December 2015, pursuant to Commission Implementing Regulation (EU) 2015/2272, definitive anti-dumping measures were imposed for a further five years ⁽⁴⁾.
- (3) On 29 January 2014, in its judgement of case T-528/09, the General Court annulled Regulation (EC) No 926/2009 in so far as the exports of products produced by Hubei Xinyegang Steel Co. Ltd ('Hubei') were concerned ⁽⁵⁾. This judgement was appealed by the Council.
- (4) By judgment of 7 April 2016 in the joined cases C-186/14 P and C-193/14 P, the Court of Justice (ECJ) upheld the findings of the General Court and confirmed the annulment of the measures insofar as the exporting producer Hubei was concerned ⁽⁶⁾.
- (5) On 9 December 2020, the anti-dumping measures imposed by Implementing Regulation (EU) 2015/2272 expired ⁽⁷⁾.
- (6) On 4 February 2021, the ECJ ruled in case C-324/19, on a request for a preliminary ruling under Article 267 TFEU from the Finanzgericht Hamburg, that Regulation (EC) No 926/2009 is invalid ('the Judgment') ⁽⁸⁾.
- (7) According to Article 266 of the Treaty on the Functioning of the European Union, the Union institutions are obliged to take the necessary steps to comply with the Court's judgments.
- (8) In case C-324/19, the Judgment had the effect of invalidating the original measures *erga omnes* and *ex-tunc*. That means the judgment is applicable to all parties and that Regulation (EC) No 926/2009 is considered invalid from the day it entered into force.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

⁽³⁾ Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China (OJ L 262, 6.10.2009, p. 19).

⁽⁴⁾ Commission Implementing Regulation (EU) 2015/2272 of 7 December 2015 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 322, 8.12.2015, p. 21).

⁽⁵⁾ Judgment of 29 January 2014, Hubei Xinyegang Steel v Council, T-528/09, ECLI:EU:T:2014:35.

⁽⁶⁾ Judgment of 7 April 2016, ArcelorMittal Tubular Products Ostrava a.s. and Others v Hubei Xinyegang Steel Co. Ltd and Council of the European Union v Hubei Xinyegang Steel Co. Ltd, joined cases C-186/14 P and C-193/14 P.

⁽⁷⁾ OJ C 424, 8.12.2020, p. 32.

⁽⁸⁾ Judgment of 4 February 2021, Eurocylinder systems AG v Hauptzollamt Hamburg-Stadt, C-324/19, EU:C:2021:94.

- (9) In addition, given the original measure had been extended in 2015, the Judgment also had an indirect impact on Regulation (EU) 2015/2272. This is because, according to the ECJ case law, a 'prolonging regulation is invalid to the same extent as the definitive regulation' ⁽⁹⁾. Furthermore, compliance with the rule of equivalence of form requires that the anti-dumping measures imposed by Implementing Regulation (EU) 2015/2272 should be repealed by means of a Commission regulation ⁽¹⁰⁾.
- (10) As a result of the Judgment declaring Regulation (EC) No 926/2009 is invalid in its entirety, the anti-dumping duties imposed by Implementing Regulation (EU) 2015/2272 should also be repealed *ex tunc*. Furthermore, any definitive duty paid pursuant to Implementing Regulation (EU) 2015/2272 may be repaid or remitted in accordance with the applicable customs legislation. It follows, in particular, that the operator which has paid those duties is able, in principle, to claim their repayment only if and in so far as the three-year period laid down for that purpose in Article 121(1)(a) of the Union Customs Code ⁽¹¹⁾ has not expired. The fact that Regulation (EC) No 926/2009 has been declared invalid (including with *erga omnes* effect) would not represent an unforeseeable circumstance or *force majeure* allowing for an extension of this period under second subparagraph of Article 121(1) of the Union Customs Code. ⁽¹²⁾
- (11) 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 anti-dumping duties on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China imposed by Implementing Regulation (EU) 2015/2272 are repealed as from 9 December 2015.
2. Any definitive duty paid pursuant to Implementing Regulation (EU) 2015/2272 shall be repaid or remitted in accordance with the applicable customs legislation.

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, 25 June 2021.

For the Commission
The President
Ursula VON DER LEYEN

⁽⁹⁾ Judgment of 4 February 2016, C & J Clark International Ltd v The Commissioners for Her Majesty's Revenue & Customs and Puma SE v Hauptzollamt Nürnberg, joined cases C-659/13 and C-34/14, EU:C: 2016:74, paragraphs 175 to 177.

⁽¹⁰⁾ Judgment of 18 October 2018, ArcelorMittal Tubular Products Ostrava a.s. and Others v European Commission, T-364/16, EU:T:2018:696.

⁽¹¹⁾ 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).

⁽¹²⁾ See, in particular judgement of 4 February 2016 in C & J Clark International Ltd v The Commissioners for Her Majesty's Revenue & Customs and Puma SE v Hauptzollamt Nürnberg, joined cases C-659/13 and C-34/14, EU:C:2016:74, paragraphs 186-194; judgement of 14 June 2012, Compagnie internationale pour la vente à distance (CIVAD) SA v Receveur des douanes de Roubaix and Others, C-533/10, EU:C:2012:347, paragraphs 16-35; and judgement of 18 January 2017, Wortmann KG Internationale Schuhproduktionen v Hauptzollamt Bielefeld, C-365/15, EU:C:2017:19, paragraph 34.