Commission Implementing Regulation (EU) 2019/2131 of 28 November 2019 amending Implementing Regulation (EU) 2019/1198 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

COMMISSION IMPLEMENTING REGULATION (EU) 2019/2131

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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 Articles 13(3) and 14(5) thereof,

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) By Council Implementing Regulation (EU) No 412/2013[(2)] ('the original Regulation'), as amended by Commission Implementing Regulation (EU) 2017/1932[(3)], the Council imposed a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China ('China' or 'the PRC'). The individual anti-dumping duties in force ranged from 13,1 % to 23,4 %. All non-sampled cooperating exporting producers listed in an Annex to that Regulation received a duty of 17,9 % and all other exporting producers were subject to the residual duty of 36,1 %. These measures will hereinafter be referred to as 'the original measures' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

(2) By Commission Implementing Regulation (EU) No 803/2014[(4)], four Chinese exporting producers received the non-sampled cooperating duty of 17,9 % and were added to the list of exporting producers from China in the Annex to the original Regulation.

(3) By Commission Implementing Regulation (EU) 2017/2207[(5)], another four Chinese exporting producers received the non-sampled cooperating duty of 17,9 % and were added to the list of exporting producers from China in the Annex to the original Regulation.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/2131. (See end of Document for details)*

(4) By Commission Implementing Regulation (EU) 2019/1198, the Commission maintained the original measures pursuant to Article 11(2) of the basic Regulation[6]. These measures will hereinafter be referred to as 'the measures in force' and the expiry review investigation will be hereinafter referred to as 'the last investigation'.

1.2. **Ex-officio initiation**

(5) In early 2019, the Commission analysed available evidence on the patterns and channels of sales of ceramic tableware and kitchenware since the imposition of the original measures. The comparison of export figures between 2014 and 2018 revealed a sharp rise or fall in the exports of certain exporting producers, which constituted an indicator for channelling practices. Moreover, in some cases, the actual exports from certain exporting producers exceeded the declared production. There was also the issue of the misuse of company-specific TARIC additional codes.

(6) From these indicators, it appeared that certain exporting producers currently subject to the residual duty of 36,1 % and exporting producers subject to an individual duty were selling their ceramic tableware and kitchenware via other exporting producers subject to a lower duty.

(7) The change in the pattern of trade regarding exports from China of ceramic tableware and kitchenware, following the imposition of the original measures, for which there was insufficient due cause or economic justification other than the imposition of the duty, would appear to have stemmed from the above-mentioned channelling practices. Furthermore, the evidence available to the Commission pointed to the fact that the remedial effects of the existing anti-dumping measures on the product concerned were being undermined both in terms of quantities and prices. Indeed, the volumes of imports of the product under investigation, as defined in recital (15), increased for certain exporting producers significantly between 2014 and 2018. Moreover, in some cases, the actual exports from certain exporting producers exceeded their declared production. In addition, there was sufficient evidence that the imports of the product under investigation were at prices below the non-injurious price established in the investigation that led to the existing measures.

(8) Finally, the Commission had sufficient evidence at its disposal that the exports of the product under investigation were dumped in relation to the normal value previously established.

(9) Therefore, the Commission determined, after having informed the Member States, that sufficient evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation. As a result, the Commission adopted Regulation (EU) 2019/464[7] (the 'initiating Regulation'), launching on its own initiative an investigation on the possible circumvention of the anti-dumping measures on imports of ceramic tableware and kitchenware originating in China imported under the 50 TARIC additional codes listed in the Annex to the initiating Regulation. These TARIC additional codes had been attributed to 50 exporting producers that were either groups of companies or individual companies from the PRC ('companies').

(10) The Commission also directed customs authorities to register imports of ceramic tableware and kitchenware imported under the 50 TARIC additional codes listed in the annex to the initiating Regulation.

1.3. **Investigation**

(11) The Commission notified the authorities of the PRC, the 50 exporting producers listed in the Annex to the initiating Regulation and the Union industry about the initiation of the investigation. It also sent questionnaires to the 50 exporting producers listed in this Annex, asking also information in respect of any related company, located in the People's Republic of China. Interested parties were given the opportunity to make their views known in writing, as well as to request a hearing.

(12) The above-mentioned 50 exporting producers listed in the Annex to the initiating Regulation were subject to the following anti-dumping duties:

— 48 of them belonged to the group of non-sampled cooperating exporting producers with a rate of duty of 17,9 %;

— The two remaining exporting producers had individual rates of duty of 22,9 % and 23,4 %.

1.4. **Reporting period and investigation period**

(13) The investigation period covered the period from 1 January 2015 to 31 December 2018 (the 'IP'). For the IP data were collected to investigate, inter alia, the alleged change in the pattern of trade and the practice, process or work behind it. For the period from 1 January 2018 to 31 December 2018 (the reporting period or 'the RP'), more detailed data were collected in order to examine the possible undermining of the remedial effect of the measures in force and the existence of dumping.

2. **RESULTS OF THE INVESTIGATION**

2.1. **General considerations**

(14) Pursuant to Article 13(1) of the basic Regulation, the Commission analysed whether there was a change in the pattern of trade with respect to individual exporting producers in the PRC, whether this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than avoiding 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 prices and/or quantities of the product under investigation, and whether there was evidence of continued dumping.

2.2. **Product concerned and product under investigation**

(15) The product concerned is ceramic tableware and kitchenware, currently falling under CN codes ex 6911 10 00, ex 6912 00 21, ex 6912 00 23, ex 6912 00 25 and ex 6912 00 29 (TARIC codes 6911100090, 6912002111, 6912002191, 6912002310, 6912002510 and 6912002910) and originating in the People's Republic of China ('the product concerned').

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/2131. (See end of Document for details)*

The following products are excluded:

— ceramic condiment or spice mills and their ceramic grinding parts,

— ceramic coffee mills,

— ceramic knife sharpeners,

— ceramic sharpeners,

— ceramic kitchen tools to be used for cutting, grinding, grating, slicing, scraping and peeling, and

— cordierite ceramic pizza-stones of a kind used for baking pizza or bread.

(16) The product under investigation is the same as 'the product concerned' defined in the previous recital, currently falling under the same CN and TARIC codes as the product concerned and imported under the TARIC additional codes listed in the Annex to the initiating Regulation ('the product under investigation').

2.3. **Detailed findings of the investigation for the 50 exporting producers**

2.3.1. *The 13 companies that did not submit questionnaire replies*

(17) 13 out of 50 exporting producers did not submit any questionnaire replies.

(18) The Commission qualified these 13 exporting producers as non-cooperating pursuant to Article 18(1) of the basic Regulation and consequently based its findings for them on the facts available as explained in the next recital.

(19) All 13 exporting producers, subject to a rate of duty of 17,9 %, had sharply increased their exports between 2014 and 2018, or exported above their capacity, as declared in the framework of the sampling exercise during the last expiry review investigation. In the absence of any economic justification other than circumvention practices, the Commission concluded that these exporting producers are engaged in channelling practices. Therefore, it is appropriate that their company-specific TARIC additional codes should be repealed and that these exporting producers should be subject to the residual rate of duty of 36,1 %.

(20) Moreover, three of the 13 exporting producers were related to three other exporting producers having the non-sampled cooperating rate of duty of 17,9 % because of their own individual TARIC additional code.

(21) Consequently, to avoid the risk of channelling practices via these related companies, before disclosure, the Commission preliminarily concluded that it was appropriate that their company-specific TARIC additional code should be repealed. The residual rate of duty of 36,1 % should also be applied to the three related exporting producers.

(22) Following disclosure, one of the three companies came forward and claimed that it was not related to one of the companies that did not submit a questionnaire reply. At a hearing of 10 October 2019 and in a subsequent letter of 21 October 2019, it explained that its sampling reply from the expiry review had wrongly indicated that both companies were related, although in reality they were just business partners. Upon

request of the Commission, the company provided the documents about its company structure and shareholders, which showed that indeed no such relationship exists. Absent the relationship and in view of that company's demonstration that its increased export activity was in line with an increase of its production capacity in 2016, the Commission concluded that it was not necessary to repeal the company-specific TARIC additional code of this company.

(23) Consequently, following disclosure, the Commission finally concluded that the residual rate of duty of 36,1 % should be applied to:

— The 13 out of 50 exporting producers that did not submit any questionnaire replies (see recital (19) before), and;

— The two exporting producers that were related to two out of these 13 exporting producers and that had their own company-specific TARIC additional codes.

2.3.2. *The 18 exporting producers that submitted highly deficient questionnaire replies*

(24) When analysing the questionnaire replies from the 37 exporting producers who did submit replies, the Commission found 18 of them to have submitted highly deficient replies as explained in the following recitals.

(25) A first exporting producer submitted partial information and declared on 28 April 2019 that it had ceased producing the product concerned in August 2018. The Commission informed the company on 3 June 2019 that only exporting producers are entitled to an individual TARIC additional code. Therefore, it intended to remove its TARIC additional code and to treat the company as any other company under the TARIC additional code 'B999' in the future. The company did not submit further comments.

(26) A second exporting producer, also subject to an anti-dumping duty of 17,9 %, provided via several submissions in April and May 2019 a questionnaire reply. This reply indicated that the exporting producer only had one related company. The Commission crosschecked that reply with other publicly available sources of information. It established that there were other related companies within this group, which had not been disclosed by the company in its questionnaire reply. The exporting producer was informed of that finding in a deficiency letter of 24 June 2019. Subsequently, the exporting producer admitted on 28 June 2019 that it was also related to another company. However, the exporting producer group did not fill out the requested questionnaire reply for the latter company within the set time-limits. Therefore, the Commission informed the exporting producer on 8 July 2019 that it would make its findings based on facts available[8], and that the company had the right to request a hearing with the Hearing Officer in Trade Proceedings. The exporting producer did not submit further comments.

(27) A third exporting producer informed the Commission on 5 July 2019 that it was unable to answer to the Commission's deficiency letter and that it was well aware of the adverse consequence of not replying. Therefore, the Commission informed the exporting producer on 9 July 2019 that it would make its findings based on facts