Commission Implementing Regulation (EU) 2017/2213 of 30 November 2017 amending Commission Implementing Regulation (EU) 2017/271 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

COMMISSION IMPLEMENTING REGULATION (EU) 2017/2213

of 30 November 2017

amending Commission Implementing Regulation (EU) 2017/271 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)] and in particular Article 13 thereof,

Whereas:

(1) With Regulation (EC) No 925/2009[(2)], the Council imposed a definitive anti-dumping duty on aluminium foil originating in Armenia, Brazil and China. With Implementing Regulation (EU) 2015/2384[(3)] the Commission extended the measures on 17 December 2015 for another 5 years for exports from China only and terminated the measures for Brazil.

(2) With Commission Implementing Regulation (EU) 2017/271[(4)] (the 'Regulation'), the definitive anti-dumping duty imposed on imports of certain aluminium foil originating in the People's Republic of China was extended to imports of slightly modified certain aluminium foil.

(3) Article 1(1) of the Regulation refers to Regulation (EC) No 925/2009 when extending the applicable anti-dumping duties to the slightly modified certain aluminium foil. However, as the measures are not in force any more for Armenia and Brazil, the correct reference should have been the legal basis for the measures in force for China only, namely Commission Implementing Regulation (EU) 2015/2384. Therefore, it is appropriate to amend Article 1(1) of the Regulation retro-actively by a reference to Commission Implementing Regulation (EU) 2015/2384 instead of Council Regulation (EC) No 925/2009.

(4) In order to limit the risk of circumvention, Article 1(3) of the Regulation states that the application of exemptions granted to the companies specifically mentioned in paragraph 2 of the same Article shall be conditional upon presentation to the customs authorities

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/2213. (See end of Document for details)*

of the Member States of a valid commercial invoice. This commercial invoice must conform to the requirements set out in Article 1(3) of the Regulation.

(5) Since the entering into force of the Regulation this commercial invoice generated difficulties with national customs services as it can only be issued by the manufacturer. However, the underlying investigation revealed that, normally, those exporting producers listed in Article 1(2) of the Regulation export via unrelated traders. Thus, they cannot meet this requirement without significant disruption to their business practices. Indeed, if these economic operators were required to meet the requirements of Article 1(3) of the Regulation, they would be forced to change their sales channels and start selling their products directly to the Union, because maintaining their current sales channels, i.e. selling via unrelated traders may result in them being subjected to the anti-dumping duty rate imposed by Article 1(2) of Commission Implementing Regulation (EU) 2015/2384.

(6) The exporting producers listed in Article 1(2) of the Regulation are producers of aluminium converter foil. Aluminium converter foil has different technical characteristics, different distribution channels, and end-use than the product concerned by the Regulation. It is not in competition with the product concerned, nor was it intended to be part of the product scope, but could not be excluded from the product definition for reasons explained in recitals 60 to 72 in the Regulation. Furthermore, these exporting producers had been verified onspot as explained in recital 80 of the Regulation, and it was established that they had not in the past produced the product concerned by the Regulation. Therefore the Commission considers that there is a limited risk that these exporting producers would try to circumvent the measures in the future.

(7) The Commission came to the conclusion that it would be unduly burdensome to request the exempted companies listed in Article 1(2) of the Regulation to change their usual business operation and start selling directly to the Union. Against this background, it is appropriate to remove this requirement from the Regulation. Thus, exporting producers listed in Article 1(2) of the Regulation will not be obliged to issue such a commercial invoice.

(8) In any case, the removal of this requirement should not prevent customs authorities from performing additional checks concerning the shipment in question, in line with the risk profile associated with the import concerned, until they can satisfy themselves that the manufacturer declared on the documents is correct.

(9) In order to provide legal certainty to economic operators, it is furthermore appropriate that these amendments apply with retroactive effect as from the date of entry into force of the Regulation. This is in line with the existing case law of the European Courts, given that the amendment has been made in a reasonable period of time, so that no legitimate expectations were created for the economic operators concerned. In any case, economic operators exporting to the Union will not have their businesses unduly affected, as the deletion of this requirement creates legal certainty for the purposes of importing into the Union for both exporting producers from China as well as importers in the Union[(5)].

(10) On 7 August 2017, the Commission disclosed to all interested parties the essential facts and considerations on the basis of which it deemed the present amendment necessary, and invited them to comment.

(11) The applicant who lodged the request for the extension of the duties objected the Commission's proposal to remove the requirement to present a commercial invoice issued by the manufacturer. It argued in particular that by removing this requirement, the Commission would be creating a risk of additional circumvention, and therefore, additional uncertainties for the Union aluminium foil industry.

(12) As explained in recital 8, the removal of this requirement would not prevent customs authorities from performing additional checks to verify whether the manufacturer declared on the documents was correct. If anything it would encourage the customs authorities to carry out additional checks in case of doubts that the consignments in question really comes from an exempted companies. Furthermore these exempted exporting producers were not involved in circumvention practice in the past, they do not produce the product concerned, and the customers of the aluminium converter foil are different from the customer of the product concerned. The Commission therefore concluded that the removal of the requirement to produce such a commercial invoice did not create additional risk of circumvention and rejected the claim.

(13) 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 (EU) 2016/1036.

(14) In view of the above and pursuant to Article 13 of Regulation (EU) 2016/1036, Article 1 of Implementing Regulation (EU) 2017/271 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2017/271 is amended as follows:

(1) Article 1(1) is replaced by the following:

Article 1

1 The definitive anti-dumping duty applicable to “all other companies” imposed by Article 1(2) of Commission Implementing Regulation (EU) 2015/2384 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