Commission Implementing Regulation (EU) 2017/1146 of 28 June 2017 re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1146

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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 Article 9(4) thereof,

Whereas:

1. **PROCEDURE**

(1) By Implementing Regulation (EU) No 430/2013[(2)] ('the contested Regulation'), the Council imposed a definitive anti-dumping duty at rates ranging from 14,9 % to 57,8 % on imports of threaded tube or pipe cast fittings, of malleable cast iron, currently falling within CN code ex 7307 19 10 (TARIC code 7307 19 10 10) and originating in the People's Republic of China and Thailand. Bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid are not covered by the duty.

The Judgement of the General Court of the European Union

(2) On 12 June 2013, one cooperating Chinese exporting producer, Jinan Meide Castings Co., Ltd ('Jinan Meide or the applicant'), lodged an application at the General Court of the European Union ('the General Court') seeking the annulment of the contested Regulation in so far as it applies to the applicant[(3)].

(3) On 30 June 2016, the General Court in its judgment found that the rights of defence of Jinan Meide were breached by the rejection of its request for disclosure of normal value calculations using confidential data of an analogue country producer. Jinan Meide had obtained an exclusive authorisation from the analogue country producer waving the confidentiality of its data. In particular, the General Court found that the Commission was wrong to rely on the need to comply with the principle of equal treatment in order to reject this request for disclosure. The General Court held that it could not be ruled out that if the request had been accepted, the outcome of the investigation could have been different. Therefore, the Court annulled the contested

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Regulation in so far as it imposed an anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, manufactured by Jinan Meide.

2. IMPLEMENTATION OF THE GENERAL COURT'S JUDGMENT

(4) According to Article 266 of the Treaty on the Functioning of the European Union, the Union institutions are obliged to comply with the Court's judgment of 30 June 2016.

(5) In its judgment in case T-2/95[(4)] (the 'IPS case'), the Court of First Instance recognised that, in cases where a proceeding consists of several administrative steps, the annulment of one of those steps does not annul the complete proceeding. The anti-dumping proceeding is an example of such a multi-step proceeding. Consequently, the annulment of the contested Regulation in relation to one party does not imply the annulment of the entire procedure prior to the adoption of that Regulation. The EU institutions have the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the uncontested parts which are not affected by the Court judgment — as was held by the Court of Justice in case C-458/98 P[(5)].

(6) It should be noted that apart from the finding that the Commission was wrong to rely on the need to comply with the principle of equal treatment in order to reject Jinan Meide's request for disclosure, all other findings made in the contested Regulation which were not contested within the time-limits for a challenge or which were contested but rejected by the General Court's judgment or not examined by the General Court and therefore did not lead to the annulment of the contested Regulation, remain valid.

(7) Following the Court's judgment of 30 June 2016, the Commission published a notice[(6)] concerning the partial reopening of the anti-dumping investigation concerning imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China. The reopening was limited in scope to the implementation of the judgment of the General Court with regard to Jinan Meide.

(8) The Commission officially advised Jinan Meide, the representatives of the exporting country and the Union industry of the partial reopening of the investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the notice.

(9) Following the initial comments received, all other interested parties known to be concerned from the original investigation were contacted and given the opportunity to make their views known in writing and to request a hearing.

(10) All interested parties who so requested were granted the opportunity to be heard by the Commission services and/or the Hearing officer.

2.1. Comments of interested parties

(11) The Commission received submissions on various aspects of the investigation from Jinan Meide, other Chinese exporting producers, one Thai exporting producer, five Union producers and eight unrelated importers.

2.1.1. *Comments on the reopening*

(12) Jinan Meide argued that the illegality committed by the Union Institutions which led to the annulment of contested Regulation cannot be cured and the proceeding should be terminated without re-imposing any anti-dumping duty on Jinan Meide.

(13) As stated above in recital 4, the Court of First Instance in the IPS case recognised that, in cases where a proceeding consists of several administrative steps, such as in an anti-dumping proceeding, the annulment of one of those steps does not annul the complete proceeding. Since the Union institutions are obliged to comply with the Court's judgment, this implies the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the uncontested parts. The claim was therefore rejected.

(14) One unrelated importer claimed that it is procedurally not possible to reopen an investigation which has previously been concluded, as substantive failures would consequently occur, like accepting new information after the closure of a case, discrimination against all other parties to the investigation whose dumping margins would be different if Jinan Meide's dumping margin was amended and a breach of EU and WTO law in the sense that anti-dumping measures cannot be applied retroactively.

(15) This importer also claimed that a reopening does not appear to be permitted under the terms of the basic Regulation.

(16) The same party also stated that the Commission is not authorised to take action to implement a Court judgment in respect of a Council Regulation as the Commission was not the defendant in Case T-424/13. It claimed that the Commission needs to receive formal instructions from the Council to launch a reopening.

(17) It is clear from the judgment of joined cases C-283/14 and C-284/14[(7)] that the EU Institutions may reopen an anti-dumping investigation to amend irregularities found by the European Courts even though this is not expressly provided for in the basic Regulation. The EU Institutions are in fact required to take the necessary measures to remedy illegalities. In this case, as the investigating authority, the Commission reopened the investigation in order to implement the Court's judgement. The reopening of this investigation follows the legal procedures required by the basic Regulation, which provide for adoption by the Commission after consulting the Member States under the examination procedure referred to in Article 15(3) of the basic Regulation. The claims were therefore rejected.

(18) One importer stated that it was not clear to what extent a reopening can be carried on under the provisions of the current basic Regulation, as it is apparent the Commission intended to pursue the investigation as if it were put back in time when Council Regulation (EC) No 1225/2009[(8)] was still in force.

(19) The law applicable to this reinvestigation is Regulation (EC) No 1225/2009, which was the substantive law at the time of the adoption of the regulation annulled

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by the Court. In any event, Regulation (EU) 2016/1036 is a codification of Regulation (EC) No 1225/2009 and its amendments. The argument was therefore rejected.

(20) An exporting producer from Thailand argued that the Commission must re-impose the duty of 40,8 % on Jinan Meide without modification, as the General Court did not find fault with any substantive findings, only a procedural irregularity. It also claimed that any substantive reconsideration can only address the normal value calculation for Jinan Meide and all other findings in the contested Regulation should remain valid, as there was no indication in the General Court's judgment that remedying the procedural irregularity should result in any substantive changes to the normal value calculation for Jinan Meide.

(21) In the judgment leading to the present reopening, the General Court held that it could not be ruled out that if the request for disclosure of confidential data of the analogue country producer had been accepted, the outcome of the investigation could have been different. The reopening has therefore to examine possible impact on substance of the investigation. The argument was therefore rejected.

(22) One unrelated importer argued that as the Union industry did not submit any comments concerning the reopening, which allegedly meant that there is no Union interest to conduct this reopened investigation.

(23) The lack of submission by a certain type of operator cannot *per se* lead to any conclusion on substance in an investigation. In any case, five Union producers requested the Commission to re-impose the anti-dumping duty on Jinan Meide urgently and even to register imports for potential retroactive imposition of duties, in order to limit the damage the current situation causes to the Union producers. The argument was therefore rejected.

2.1.2. *Comments on the calculation of normal value*

(24) Jinan Meide claimed that it should get comprehensive access to all information submitted by the analogue country producer and abundant time to lodge comments. All such information was made available to Jinan Meide, and Jinan Meide had time to lodge comments beyond the time-frame foreseen in the basic Regulation, including several hearings with the case team and with the Hearing Officer. Following disclosure of the confidential information and the dumping calculations, Jinan Meide also made submissions outside of deadlines set for that purpose, which were nevertheless considered.

(25) Jinan Meide claimed that an ordinary course of trade test should not be carried out, since the analogue country producer was not able to provide a reliable cost of production by type of the like product. One importer supported this argument, since a cost allocation based on turnover assumes that the same profit margin is generated for all product types, which is allegedly unreliable.

(26) However, the Commission consistently carries out the ordinary course of trade test in its investigations. In particular, Article 2(5) of the basic Regulation specifically deals with such situations as referred to by Jinan Meide, stating that in the absence of

a more appropriate method, preference shall be given to the allocation of costs on the basis of turnover. In this respect, it is noted that the costs were allocated on the basis of turnover and that no other more suitable method was proposed by any interested party. The decision to allocate costs on the basis of turnover and to carry out an ordinary course of trade test was therefore maintained.

(27) Jinan Meide requested that product types that are sold by the analogue country producer in quantities below 200 kg should be disregarded from the normal value calculation, as prices of such product types are allegedly unreliable. It is noted that Jinan Meide claimed during the original investigation that the 5 % representativity test should not be carried out when normal value is established in an analogue country, and this claim was accepted by the Commission at the time. The claim to disregard sales of product types sold in quantities below 200 kg is rejected since sales prices for types of the like product sold in quantities below 200 kg cannot be considered unreliable, as they were verified and found as reliable as any other sales prices.

(28) One importer supported Jinan Meide's argument, since the price volatility for slow-moving product types would allegedly be high. This would mean that product types may have a very similar quality and cost structure, but might be sold at very different prices. However, the Commission established that, in respect of the analogue country producer, the price volatility is high for all product types, even the best-selling items. Therefore, the alleged high price volatility cannot be used as an argument to exclude slow-moving product types from the dumping calculation. The claim was therefore rejected.

(29) Jinan Meide also claimed that as the Commission had allocated costs of the analogue country producer on the basis of turnover, the normal value should not be constructed if the comparable types of the like product in the analogue country were sold in quantities below 200 kg, but that the normal value should be established in such cases on the basis of prices of other similar types sold in larger quantities. This claim was likewise rejected, as the allocation of total costs on the basis of turnover is in line with Article 2(5) of the basic Regulation and the arguments of Jinan Meide were not sufficient to justify a different methodology in this particular case.

2.1.3. *Comments on the comparison of normal value and export price*

(30) Jinan Meide brought forward claims concerning adjustments in the analogue country producer's data for credit, packing expenses, level of trade, bank charges, domestic transport, credit notes, indirect taxes, technical support, use of different raw materials and different labour productivity.

(31) The Commission accepted the claim concerning domestic transport and the credit costs as related to one single customer of the analogue country producer and the corresponding adjustments were made in the dumping calculation of Jinan Meide.

(32) As concerns the claims regarding the difference in labour productivity and the use of different raw materials, Jinan Meide alleged that the lower productivity per worker and the use of different raw materials lead to a moderate cost increase