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

COMMISSION IMPLEMENTING REGULATION (EU) 2017/271

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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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/271. (See end of Document for details)*

(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.

(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[(4)] ('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

— 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[(5)] ('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

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/271. (See end of Document for details)*

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.

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[6]. 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[7]. The request was withdrawn by the applicant and the measures on ACF were not imposed[8]. 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.

(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[9]. This ratio was then extrapolated for the years concerned since 2009.