Commission Implementing Regulation (EU) 2016/865 of 31 May 2016 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Implementing Regulation (EU) 2015/2384 on imports of certain aluminium foil originating in the People's Republic of China by imports of slightly modified certain aluminium foil from the People's Republic of China, and making such imports subject to registration

COMMISSION IMPLEMENTING REGULATION (EU) 2016/865

of 31 May 2016

initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Implementing Regulation (EU) 2015/2384 on imports of certain aluminium foil originating in the People's Republic of China by imports of slightly modified certain aluminium foil from the People's Republic of China, and making such imports subject to registration

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] (‘the basic Regulation’) and in particular Articles 13(3) and 14(5) thereof,

After having informed the Member States,

Whereas:

A. **REQUEST**

(1) The European Commission (‘the Commission’) has received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on certain aluminium foil originating in the People's Republic of China (‘the PRC’) by imports of slightly modified certain aluminium foil from the PRC, and to make such imports subject to registration.

(2) The request was lodged on 18 April 2015. The applicant has requested anonymity and duly substantiated it in the request. The Commission considers that there are sufficient grounds to grant the confidentiality of the applicant's identity.

B. **PRODUCT**

(3) The product concerned by the possible circumvention is 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, originating in the PRC, currently falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 10) (‘the product concerned’). This is the product to which the measures currently in force apply.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/865. (See end of Document for details)*

(4) The products under investigation for possible circumvention have the same essential characteristics as the product concerned defined in the previous recital. However, they can be annealed or not, and are also presented at importation as:

— 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, 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, 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, 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.

(5) The first three products described above currently fall within the same CN code as the product concerned but under different TARIC codes (7607 11 19 30, 7607 11 19 40 and 7607 11 19 50).

(6) The last one falls in a different CN code from the product concerned (i.e. CN code ex 7607 11 90) and TARIC codes 7607 11 90 45 and 7607 11 90 80.

(7) All the products described above also originate in the PRC ('the products under investigation').

C. EXISTING MEASURES

(8) The measures currently in force and possibly being circumvented are anti-dumping measures imposed by Commission Implementing Regulation (EU) 2015/2384[(2)] ('the existing measures').

D. GROUNDS

(9) The request contains sufficient *prima facie* evidence that the anti-dumping measures imposed on the product concerned are being circumvented by means of practices, processes or work for which there is insufficient due cause or economic justification other than the imposition of the anti-dumping duty.

(10) The *prima facie* evidence submitted is as follows:

(11) Based on Chinese export statistics and Eurostat import statistics, the applicant determined the evolution of imports of each of the slightly modified products under investigation for a period starting in 2008 and ending in 2015. By comparing the evolution of imports of the product concerned with that of imports of the slightly modified products under investigation, the applicant evidenced a strong growth of imports of slightly modified product under investigation, as well as a parallel decrease of imports of the product concerned. In particular, the applicant showed that the volumes of imports of the slightly modified products under investigation were similar to those of the product concerned prior to the adoption of the initial anti-dumping measures by

Council Regulation (EC) No 925/2009[3]. Hence, the applicant demonstrated a change in the pattern of trade.

(12) Moreover, for each of the circumvention practices, the applicant provided detailed evidence on the widespread existence of such practices and the absence of any due cause or economic justification other than the imposition of the duty for such practices.

(13) Based on the information available, the applicant demonstrated that the export prices of the slightly modified products under investigation originating in the PRC, under each of the circumvention practices, significantly undercut and undersell prices of the Union industry. Consequently, imports of the slightly modified product under investigation originating in the PRC undermine the remedial effects of the antidumping measures in terms of prices, as well as quantities.

(14) Finally, based on the information reasonably available to it, the applicant established dumping margin calculations showing that the slightly modified products under investigation, under each of the circumvention practices, enter the Union market at dumped prices.

E. PROCEDURE

(15) In light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13(3) of the basic Regulation and to make imports of the products under investigation subject to registration, in accordance with Article 14(5) of the basic Regulation.

(a) Questionnaires

(16) In order to obtain information it deems necessary for its investigation, the Commission will send questionnaires to the known exporters/producers and to the known associations of exporters/producers in the PRC, to the known importers and to the known associations of importers in the Union and to the authorities of the PRC. Information, as appropriate, may also be sought from the Union industry.

(17) In any event, all interested parties should contact the Commission, but not later than the time limit set in Article 3 of this Regulation, and request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.

(18) The authorities of the PRC will be notified of the initiation of the investigation.

(b) Collection of information and holding of hearings

(19) All interested parties are invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(c) Exemption from registration of imports or measures

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/865. (See end of Document for details)*

(20) In accordance with Article 13(4) of the basic Regulation, imports of the products under investigation may be exempted from registration or measures if the importation does not constitute circumvention.

(21) Since the possible circumvention may take place outside the Union, exemptions may be granted, in accordance with Article 13(4) of the basic Regulation, to producers of the products under investigation in the PRC that can show that they are not related[4] to any producer subject to the measures[5] and that are found not to be engaged in circumvention practices as defined in Articles 13(1) and 13(2) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time limit indicated in Article 3(3) of this Regulation.

F. REGISTRATION

(22) Pursuant to Article 14(5) of the basic Regulation, imports of the products under investigation shall be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied from the date on which registration of such imports was imposed.

G. TIME LIMITS

(23) In the interest of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— producers in the PRC may request exemption from registration of imports or measures,

— interested parties may make a written request to be heard by the Commission.

(24) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time limits laid down in Article 3 of this Regulation.

H. NON-COOPERATION

(25) In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(26) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available.

(27) If an interested party does not cooperate or cooperates only partially and findings are therefore based on the facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.