Council Implementing Regulation (EU) No 260/2013 of 18 March 2013 extending the definitive anti-dumping duty imposed by Regulation (EC) No 1458/2007 on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China to imports of gas-fuelled, non-refillable pocket flint lighters consigned from the Socialist Republic of Vietnam, whether declared as originating in the Socialist Republic of Vietnam or not

COUNCIL IMPLEMENTING REGULATION (EU) No 260/2013

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THE COUNCIL OF THE EUROPEAN UNION,

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)], and in particular Article 13 thereof,

Having regard to the proposal from the European Commission after consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Background

(1) In 1991, the Council, by Regulation (EEC) No 3433/91[(2)], imposed a definitive anti-dumping duty of 16,9 % on imports of gas-fuelled, non-refillable pocket flint lighters originating, inter alia, in the People's Republic of China ('PRC') (the product under investigation).

(2) In 1995, by Council Regulation (EC) No 1006/95[(3)] the original *ad valorem* duty was replaced by a specific duty of ECU 0,065 per lighter.

(3) Further to an investigation, undertaken in accordance with Article 13 of Regulation (EC) No 1225/2009 (the 'basic Regulation'), the above measures were extended by Council Regulation (EC) No 192/1999[(4)] to (1) imports of gas-fuelled, non-refillable pocket flint lighters consigned from or originating in Taiwan and (2) imports of certain refillable lighters originating in the PRC or consigned from or originating in Taiwan with a free-at-Community frontier, duty unpaid value per piece below EUR 0,15.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 260/2013. (See end of Document for details)*

(4) In 2001, the Council, by Regulation (EC) No 1824/2001[(5)], confirmed the definitive anti-dumping duties imposed by Regulation (EC) No 1006/95 as extended by Regulation (EC) No 192/1999 ('existing measures') pursuant to Article 11(2) of the basic Regulation.

(5) In 2007, the Council, by Regulation (EC) No 1458/2007[(6)] ('the original Regulation'), confirmed the definitive anti-dumping duty imposed by Regulation (EC) No 1824/2001 pursuant to Article 11(2) of the basic Regulation. 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'.

(6) The Commission, on 12 December 2012[(7)], published a notice of expiry of the anti-dumping measures.

(7) With the expiry of the measures on 13 December 2012, by Commission Regulation (EU) No 1192/2012[(8)], the registration of imports of gas-fuelled, non-refillable pocket flint lighters consigned from Vietnam, whether declared as originating in Vietnam or not, was therefore discontinued from the same date (see also recital 14).

1.2. **Request**

(8) On 17 April 2012, the Commission received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation ('the request') to investigate the possible circumvention of the anti-dumping measures imposed on imports of gas-fuelled, non-refillable pocket flint lighters originating in the PRC and to make imports of gas-fuelled, non-refillable pocket flint lighters consigned from the Socialist Republic of Vietnam ('Vietnam'), whether declared as originating in Vietnam or not, subject to registration.

(9) The request was lodged by Société BIC, a Union producer of gas-fuelled, non-refillable pocket flint lighters.

(10) The request contained sufficient prima facie evidence that the original measures were being circumvented by means of assembly operations in Vietnam.

(11) The request showed that following the imposition of the original measures, a significant change in the pattern of trade involving exports from the PRC and Vietnam to the Union occurred, for which there was insufficient due cause or economic justification other than the imposition of the original measures. This change in the pattern of trade stemmed allegedly from the assembly operations of lighters in Vietnam using parts originating in the PRC.

(12) Furthermore, the prima facie evidence pointed to the fact that the remedial effects of the original measures were being undermined both in terms of quantity and price. The evidence showed in particular that the increased imports from Vietnam were made at prices below the non-injurious price established in the original investigation.

(13) Finally, there was also sufficient prima facie evidence that prices of gas-fuelled, non-refillable pocket flint lighters consigned from Vietnam were dumped in relation to the normal value established during the original investigation.

1.3. **Initiation**

(14) Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation, the Commission initiated an investigation by Commission Regulation (EU) No 548/2012[9] ('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 gas-fuelled, non-refillable pocket flint lighters consigned from Vietnam, whether declared as originating in Vietnam or not.

1.4. **Investigation**

(15) The Commission officially advised the authorities of the PRC and Vietnam, the exporting producers in those countries, the importers in the Union known to be concerned and Société BIC (the applicant), a Union producer representing more than 75 % of the production of gas-fuelled, non-refillable pocket flint lighters in the European Union, of the initiation of the investigation.

(16) Questionnaires were sent to 70 exporting producers in the PRC and 15 exporting producers in Vietnam known to the Commission from the request. Questionnaires were also sent to 59 importers in the Union named in the request. 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 the facts available.

(17) Eight out of the 15 known exporting producers in Vietnam came forward, one of which claimed that it did not want to be considered as an interested party as it did not produce the product under investigation and did not export to the Union.

(18) The following seven companies submitted replies to the questionnaires and verification visits were subsequently carried out at their premises:

— Viet Giai Thanh Co. Ltd, Ho Chi Minh City,
— Hoa Hung Co. Ltd, Tay Ninh Province,
— Trung Lai Gas Lighter Manufacture Co. Ltd, Nghe An Province,
— Textion Plastic Co. Ltd, Binh Duong Province,
— Cherry Year Vietnam Lighter Manufacture Co. Ltd, Tay Ninh Province,
— Huaxing Vietnam Manufacture Co. Ltd, Tay Ninh Province,
— Top Field Enterprises Co. Ltd, Tay Ninh Province.

(19) None of the known exporting producers in the PRC came forward or submitted a questionnaire reply.

(20) As regards importers, eight submitted a questionnaire reply, whereas six companies came forward and claimed that they did not want to be considered as interested parties as they did not import gas-fuelled, non-refillable pocket flint lighters from Vietnam (the product under investigation) in the Union. The remaining known companies did not come forward at all.

(21) Following the initiation of the investigation, two importers requested and were granted a hearing which was held during September 2012. The importers also submitted their observations in writing. Their observations questioned the grounds of the initiation of the investigation as regards the product scope, import volumes, economic justification for the changes in the pattern of trade, the motivations behind the request and the financial situation of the Union prducer having made the request. In the opinion of the two importers, there were insufficient grounds to initiate an investigation.

(22) The Commission provided a detailed reply to the observations and gave the parties an opportunity to comment. The Commission outlined why it considered that the request contained sufficient prima facie evidence to justify the initiation of the investigation. The comments made by the two importers did not demonstrate that there would not have been sufficient prima facie evidence to justify the initiation of the investigation.

1.5. Investigation period

(23) The investigation period covered the period from 1 January 2008 to 31 March 2012 (‘the IP’). Data were collected for the IP to investigate, inter alia, the alleged change in the pattern of trade. More detailed data were collected for the reporting period from 1 April 2011 to 31 March 2012 (‘the RP’) in order to examine the possible undermining of the remedial effect of the measures and the existence of dumping.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

(24) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was made by analysing successively whether there was a change in the pattern of trade between the PRC, Vietnam and the Union; if this change resulted from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty; if 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 product under investigation; and whether there was evidence of dumping in relation to the normal values previously established in the original investigation, if necessary in accordance with Article 2 of the basic Regulation.

2.2. Product concerned and the product under investigation

(25) The product concerned is as defined in the original investigation: gas-fuelled, non-refillable pocket flint lighters currently falling within CN code ex 9613 10 00 and originating in the People’s Republic of China (‘the product concerned’).

(26) The product under investigation is the same as that defined in the previous recital, but consigned from Vietnam, whether declared as originating in Vietnam or not, currently falling within the same CN code as the product concerned ('the product under investigation').

(27) The investigation showed that gas-fuelled, non-refillable pocket flint lighters, as defined above, exported from the PRC to the Union and those consigned from Vietnam to the Union have the same basic physical and technical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

2.3. **Degree of cooperation and determination of the trade volumes**

Vietnam

(28) As stated in recital 18, seven companies submitted questionnaire replies. For the RP, the total volume of lighters reported as sold to the Union according to these replies represented more than 100 % of the total volume of lighters reported as imported into the Union according to the Eurostat Comext database. Despite the fact that the information regarding sales volumes in the replies was considered to be unreliable as explained in recital 29 below, it is considered that this still gives an indication that cooperation was high and that the companies investigated are representative.

(29) During the verification visits carried-out at the premises of the seven Vietnamese exporting producers, it was found that they had each submitted information which could not be considered to be reliable for the purpose of establishing the findings relevant to the investigation. In particular, the seven companies were found to have wrongly stated their production volumes, imports of lighter parts and total sales. It was also found that part of the business relating to the product under investigation was not included in the official acounts and that certain assembly operations were carried out by unofficial subcontractors. Moreover, quantities of imports of parts from the PRC were not declared or wrongly stated, and part of the sales were not accounted for in the accounts of the companies. As a result, it has not been possible to reliably establish, in particular, the total production and total sales volumes of the companies concerned, or to reconcile the actual sale prices of the product under investigation and the costs relating to key input materials such as gas with the data provided in the replies to the questionnaire.

(30) In view of the situation described in recital 29, the exporting producers were informed that pursuant to Article 18 of the basic Regulation it was envisaged to base the findings and conclusions of the investigation on the best facts available. Parties were given an opportunity to comment and were granted a hearing when requested. Each party received an individual letter outlining the specific and detailed findings which led to the conclusion that the data provided could not be considered to be reliable and was not suitable to establish the facts necessary for the investigation.

(31) Two exporting producers did not provide any comments on the intention to apply Article 18 of the basic Regulation. The other five exporting producers, composed