COMMISSION IMPLEMENTING REGULATION (EU) 2019/1982

of 28 November 2019

making certain imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron originating in the People's Republic of China subject to registration following the re-opening of the investigation in order to implement the judgment of 20 September 2019, in case T-650/17, with regard to Implementing Regulation (EU) 2017/1146 re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd

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 14 thereof,

Whereas:

1. PROCEDURE

(1) On 13 May 2013, the Council adopted Implementing Regulation (EU) No 430/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia [2] ('the definitive Regulation').

(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 definitive Regulation [3].

(3) On 30 June 2016, the General Court annulled the definitive 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.

(4) On 28 June 2017, following a reinvestigation, the Commission adopted Implementing Regulation (EU) 2017/1146 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 [4] ('the anti-dumping Regulation at issue').

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[1] OJ L 176, 30.6.2016, p. 21, as last amended by Regulation (EU) 2018/825 of the European Parliament and of the Council on 7 June 2018.

[2] Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia (OJ L 129, 14.5.2013, p. 1).

[3] Case T-424/13 Jinan Meide Castings Co Ltd v Council.

[4] 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 (OJ L 166, 29.6.2017, p. 23).

(5) On 12 July 2018, the Court of Justice of the European Union decided that fittings, made of spheroidal graphite cast iron (also known as ductile cast iron) do not correspond to the concept of 'malleable cast iron', as defined within CN subheading 7307 19 10. The Court of Justice concluded that fittings made of spheroidal graphite cast iron must be classified under the residual CN subheading 7307 19 90 (as other articles of other iron). On 14 February 2019, the Commission published Regulation (EU) 2019/262 ([5]) amending the references to TARIC codes in order to align them with the court's conclusions. Because anti-dumping measures are imposed according to the product definition irrespective of the tariff classification, this amendment did not have any impact on the product scope of the measures.

(6) The applicant challenged the anti-dumping Regulation at issue in the General Court. On 20 September 2019, the General Court issued its judgement in case T-650/17 regarding the anti-dumping Regulation at issue ([6]).

(7) The General Court examined all four pleas in law raised by the applicant and rejected three of them as unfounded. Only one of the four pleas was upheld. According to the General Court, the Commission adopted an unreasonable methodology to reflect the differences in physical characteristics between product types produced in the analogue country and those exported from China. In the absence of data relating to domestic production in the analogue country, the Commission used the difference in prices observed for the export sales of the various product types from China. According to the General Court, the Commission could not assume that prices likely to be affected by dumping form the basis for a reasonable estimate of the market value of differences in physical characteristics as such prices may not be the result of normal market forces. As a result, the General Court annulled the anti-dumping duty for the applicant re-imposed by Commission Implementing Regulation (EU) 2017/1146 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.

(8) Following the General Court's judgment, the Commission decided by means of a Notice ([7]) ('the re-opening Notice'), to partially re-open the anti-dumping investigation concerning imports of threaded tube or pipe cast fittings, of malleable cast iron, that led to the adoption of the anti-dumping Regulation at issue and to resume it at the point at which the irregularity occurred. The re-opening is limited in scope to the implementation of the judgment of the General Court with regard to Jinan Meide.

2. GROUNDS FOR REGISTRATION

(9) The Commission analysed whether it is appropriate to make the imports of the product concerned subject to registration. In that context, the Commission took the following considerations into account. Article 266 TFEU provides that the Institutions must take the necessary measures to comply with the Courts' judgments. In case of annulment of an act adopted by the Institutions in the context of an administrative procedure, such as anti-dumping investigation, compliance with the Court's judgement may consist in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated ([8]).

([5]) OJ L 44, 15.2.2019, p. 6.

([6]) ECLI:EU:T:2019:644.

([7]) Notice of re-opening the investigation following the judgment of 20 September 2019, in case T-650/17, with regard to 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 and spheroidal graphite cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd (OJ C …, 29.11.2019, p. …).

([8]) Joined cases 97, 193, 99 and 215/86 Asteris AE and others and Hellenic Republic v Commission [1988] ECR 2181, paragraphs 27 and 28.

(10) According to the case-law of the Court of Justice, the procedure for replacing the annulled act may be resumed at the very point at which the illegality occurred ([9]). That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the procedure. In a situation where a Regulation imposing definitive trade defence measures is annulled, that means that, subsequent to the annulment, the proceeding is still open, because the act concluding the proceeding has disappeared from the Union legal order ([10]), except if the illegality occurred at the stage of initiation.

(11) As explained in the re-opening Notice, and since the illegality did not occur at the stage of initiation but at the stage of the investigation, the Commission decided to re-open the anti-dumping investigation in so far as it concerns Jinan Meide, and resume it at the point at which the irregularity occurred, that is in the context of the original determination relating to the period from 1 January 2011 to 31 December 2011.

(12) According to the case-law of the Court of Justice, the resumption of the administrative procedure and the eventual re-imposition of duties cannot be seen as contrary to the rule of non-retroactivity ([11]). The re-opening Notice informs interested parties, including importers, that any future liability, if warranted, would emanate from the findings of the re-examination.

(13) Based on the outcome of the re-opened investigation, which is unknown at this stage, the Commission will adopt a Regulation correcting the mistake identified by the General Court and re-imposing, where warranted, the applicable duty rate. This newly established rate, if any, will take effect as from the date on which the anti-dumping Regulation at issue entered into force.

(14) In relation to past or future liability for anti-dumping duties, the following should be noted.

(15) In the re-opening Notice, and since the amount of liability resulting from the re-examination is uncertain, the Commission requests national customs authorities to await the outcome of the re-examination before deciding on any repayment claim concerning the anti-dumping duties annulled by the General Court with respect to Jinan Meide. Customs authorities are thus directed to put on hold any claims for reimbursements of the annulled duties until the outcome of the re-examination is published in the *Official Journal*.

(16) Furthermore, should the re-opening investigation lead to the re-imposition of anti-dumping duties, those duties also need to be collected for the period during which the re-opening investigation is carried out. This is considered essential to ensure the effective application of the legally warranted measures during the lifetime of such measures, without any difference based on the time at which imports are taking place, i.e. before or after the re-opening of the investigation.

(17) In this respect, the Commission notes that registration is a tool provided in Article 14(5) of the basic anti-dumping Regulation so that measures may subsequently be applied against imports from the date of the registration. This is the case, for instance, of securing the payment in the event of application of duties or in anti-circumvention cases. In the present case, the Commission deems it appropriate to register imports concerning Jinan Meide with a view to facilitating the collection of anti-dumping duties after the re-opening of the investigation, if warranted.

([9]) Case C-415/96 Spain v Commission [1998] ECR I-6993, paragraph 31; Case C-458/98 P Industrie des Poudres Sphériques v Council [2000] I-8147, paragraphs 80 to 85; Case T-301/01 Alitalia v Commission [2008] II-1753, paragraphs 99 and 142; Joined Cases T-267/08 and T-279/08 Région Nord-Pas de Calais v Commission [2011] II-0000, paragraph 83.

([10]) Joined cases 97, 193, 99 and 215/86 Asteris AE and others and Hellenic Republic v Commission [1988] ECR 2181, paragraphs 27 and 28. Case C-415/96 Spain v Commission [1998] ECR I-6993, paragraph 31; Case C-458/98 P Industrie des Poudres Sphériques v Council [2000] I-8147, paragraphs 80 to 85; Case T-301/01 Alitalia v Commission [2008] II-1753, paragraphs 99 and 142; Joined Cases T-267/08 and T-279/08 Région Nord-Pas de Calais v Commission [2011] II-0000, paragraph 83.

([11]) Case C-256/16 Deichmann SE v Hauptzollamt Duisburg, Judgment of the Court of 15 March 2018, paragraph 79 and Case C 612/16 C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs, judgment of 19 June 2019, paragraph 58.

(18) In line with the jurisprudence of the Court of Justice ([12]), it is noted that, contrary to registration taking place during the period before the adoption of provisional measures, the conditions of Article 10(4) of the basic anti-dumping Regulation are not applicable to the case at hand. Indeed, the purpose of registration in the context of Court implementation investigation is not to allow the possible retroactive collection of trade defence measures as envisaged in that provision. Rather, the reasons for registration are that, as recalled above, in order to ensure the effectiveness of the measures it is appropriate to ensure, to the extent possible, that imports are subject to the correct anti-dumping liability without undue interruption from the date of entry into force of the anti-dumping regulation at issue until the re-imposition of the corrected duties, if any.

(19) In light of the above considerations, the Commission considers that there are grounds for registration pursuant to Article 14(5) of the basic anti-dumping Regulation.

3. REGISTRATION

(20) Pursuant to Article 14(5) of the basic anti-dumping Regulation, imports of the product concerned produced by Jinan Meide under TARIC additional code B336 shall be made subject to registration in order to ensure that, should the investigation result in re-imposing the measures, anti-dumping duties of an appropriate amount can be levied on such imports.

(21) As indicated in the re-opening Notice, the final liability for payment of anti-dumping duties, if any, from the date of entry into force of the anti-dumping regulation at issue will emanate from the findings of the re-examination. However, no duties higher than the duties established in the anti-dumping regulation at issue shall be collected for the period between 2 December 2019 and the date of entry into force of the results of the re-opening investigation. The current anti-dumping duty applicable to Jinan Meide is 39,2 %,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Customs authorities shall, pursuant to Article 14(5) of Regulation (EU) 2016/1036, take the appropriate steps to register the imports into the Union of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid, currently falling under CN codes ex 7307 19 10 (TARIC code 7307 19 10 10) and ex 7307 19 90 (TARIC code 7307 19 90 10), originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd (TARIC additional code B336).

2. Registration shall expire nine months following the date of entry into force of this Regulation.

3. The rate of the anti-dumping duties that can be collected on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid, currently falling under CN codes ex 7307 19 10 (TARIC code 7307 19 10 10) and ex 7307 19 90 (TARIC code 7307 19 90 10), originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd (TARIC additional code B336) between the re-opening of the investigation and the date of entry into force of the results of the re-opening investigation shall not exceed those imposed by Implementing Regulation (EU) 2017/1146.

4. The national customs authorities shall await the publication of the relevant Commission Implementing Regulation re-imposing the duties before deciding on the claim for repayment and remission of anti-dumping duties insofar as imports concerning Jinan Meide Castings Co., Ltd are concerned.

([12]) Case C-256/16 Deichmann SE v Hauptzollamt Duisburg, paragraph 79 and Case C-612/16, C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs, judgment of 19 June 2019, paragraph 58.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 November 2019.

For the Commission

The President

Jean-Claude JUNCKER