COMMISSION IMPLEMENTING REGULATION (EU) 2018/1711

of 13 November 2018

amending Council Implementing Regulation (EU) No 1371/2013 as regards the date of application of the exemptions granted to Indian exporting producers

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 Articles 11(3), 13(4), and 14(3) thereof,

After consulting the Member States,

Whereas:

1. MEASURES IN FORCE

(1) On 9 August 2011, following an anti-dumping investigation, the Council imposed by Implementing Regulation (EU) No 791/2011 ([2]) a definitive anti-dumping duty of 62,9 % on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China ('PRC').

(2) On 24 July 2012, following an anti-circumvention investigation pursuant to Article 13 of Council Regulation (EC) No 1225/2009 ([3]) ('the basic Regulation'), the Council extended by Implementing Regulation (EU) No 672/2012 ([4]) the measures to imports of certain open mesh fabrics of glass fibres consigned from Malaysia, whether declared as originating in Malaysia or not.

(3) On 16 January 2013, following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, the Council extended by Implementing Regulation (EU) No 21/2013 ([5]) the measures to imports of certain open mesh fabrics of glass fibres consigned from Taiwan and Thailand, whether declared as originating in Taiwan and Thailand or not.

(4) On 20 December 2013, following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, the Council extended by Implementing Regulation (EU) No 1371/2013 ([6]) the measures to imports of certain open mesh fabrics of glass fibres consigned from India and Indonesia, whether declared as originating in India and Indonesia or not and granted an exemption from that duty to Montex Glass Fibre Industries Pvt. Ltd Pursuant to Article 1(3) of Implementing Regulation (EU) No 1371/2013, duties became due on all imports of

([1]) OJ L 176, 30.6.2016, p. 21, as last amended by Regulation (EU) 2018/825 (OJ L 143, 7.6.2018, p. 1).

([2]) Council Implementing Regulation (EU) No 791/2011 of 3 August 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China (OJ L 204, 9.8.2011, p. 1).

([3]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51), as last amended by Regulation (EU) No 37/2014 of the European Parliament and of the Council (OJ L 18, 21.1.2014, p. 1) replaced by Regulation (EU) 2016/1036, as last amended by Regulation (EU) 2018/825.

([4]) Council Implementing Regulation (EU) No 672/2012 of 16 July 2012 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 791/2011 on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China to imports of certain open mesh fabrics of glass fibres consigned from Malaysia, whether declared as originating in Malaysia or not (OJ L 196, 24.7.2012, p. 1).

([5]) Council Implementing Regulation (EU) No 21/2013 of 10 January 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 791/2011 on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China to imports of certain open mesh fabrics of glass fibres consigned from Taiwan and Thailand, whether declared as originating in Taiwan and Thailand or not (OJ L 11, 16.1.2013, p. 1).

([6]) Council Implementing Regulation (EU) No 1371/2013 of 16 December 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 791/2011 on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China to imports of certain open mesh fabrics of glass fibres consigned from India and Indonesia, whether declared as originating in India and Indonesia or not (OJ L 346, 20.12.2013, p. 20).

the product concerned (with the exception of those produced by Montex Glass Fibre Industries Pvt. Ltd) which were previously made subject to registration by Commission Regulation (EU) No 322/2013 ([1]) initiating the anti-circumvention investigation.

(5) On 21 January 2014, Pyrotek Incorporated, a North American company with factories or sales offices in various countries, including the Union Member States, requested an exemption from the extended measures pursuant to Article 11(4) of the basic Regulation in respect of Pyrotek India Pvt. Ltd, an exporting producer from India.

(6) In response to a questionnaire sent by the Commission, Pyrotek India Pvt. Ltd indicated that it had exported the product concerned during the period of the anti-circumvention investigation leading to the extension of measures to India, that is to say from 1 April 2012 to 31 March 2013. Therefore, Pyrotek India Pvt. Ltd did not meet the conditions set in Article 11(4) of the basic Regulation. However, the request contained sufficient evidence to justify the initiation of a partial interim review of the measures as extended to India pursuant to Articles 11(3) and 13(4) of the basic Regulation.

(7) On 23 September 2014, the Commission initiated a partial interim review pursuant to Articles 11(3) and 13(4) of the basic Regulation. During this partial interim review, the Commission established that Pyrotek India Pvt. Ltd had been a genuine producer of the product concerned since it started its production in August 2011 and did not engage in circumvention practices.

(8) On 10 September 2015, following an investigation pursuant to Articles 11(3) and 13(4) of the basic Regulation, the Commission exempted by Implementing Regulation (EU) 2015/1507 ([2]) certain Indian producers, including Pyrotek India Pvt. Ltd from the extension of the duty applicable to imports of the product concerned consigned from India, whether declared as originating in India or not. Pyrotek India Pvt. Ltd was consequently granted an exemption from the extended measures for exports to the Union as of that date.

(9) On 6 November 2017, following an expiry review pursuant to Article 11(2) of the basic Regulation, the Commission imposed by Implementing Regulation (EU) 2017/1993 ([3]) a definitive anti-dumping duty on imports of certain open mesh fabrics of glass fibres originating in the PRC as extended to imports of certain open mesh fabrics of glass fibres consigned from India, Indonesia, Malaysia, Taiwan and Thailand, whether declared as originating in these countries or not.

2. **REOPENING OF THE EXEMPTION INVESTIGATION**

(10) As set out on in recital (6) above, the Commission established that Pyrotek India Pvt. Ltd had been a genuine producer of the product concerned since it started its production in August 2011 and did not engage in circumvention practices. Therefore, the Commission decided to reopen partially the exemption investigation.

(11) On 18 May 2018, the Commission initiated the partial reopening of the exemption investigation with regard to imports of open mesh fabrics of glass fibres, of a cell size of more than 1,8 mm both in length and in width and weighing more than 35 g/m², excluding glass fibre discs, originating in in the PRC or consigned from India, whether declared as originating in India or not, currently falling within CN codes ex 7019 51 00 and ex 7019 59 00. It published a Notice of Initiation in the *Official Journal of the European Union* ([4]) ('the Notice of Initiation').

([1]) Commission Regulation (EU) No 322/2013 of 9 April 2013 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 791/2011 on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China by imports of certain open mesh fabrics of glass fibres consigned from India and Indonesia, whether declared as originating in India and Indonesia or not, and making such imports subject to registration (OJ L 101, 10.4.2013, p. 1).

([2]) Commission Implementing Regulation (EU) 2015/1507 of 9 September 2015 amending Council Implementing Regulation (EU) No 1371/2013 extending a definitive anti- dumping duty imposed on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China to imports consigned, inter alia, from India, whether declared as originating in India or not (OJ L 236, 10.9.2015, p. 1).

([3]) Commission Implementing Regulation (EU) 2017/1993 of 6 November 2017 imposing a definitive anti-dumping duty on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China as extended to imports of certain open mesh fabrics of glass fibres consigned from India, Indonesia, Malaysia, Taiwan and Thailand, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 288, 7.11.2017, p. 4).

([4]) Notice of Initiation concerning the anti-dumping measures applicable to imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China, as extended to imports consigned from India, whether declared as originating in India or not (OJ C 171, 18.5.2018, p. 10).

(12) In the Notice of Initiation, the Commission stated that the reopening was limited in scope to assessing whether it would be appropriate to extend the temporal scope of the exemption to the period between 21 December 2013 and 10 September 2015.

(13) In the Notice of Initiation, the Commission also invited interested parties to come forward in order to participate in the investigation. It specifically informed Pyrotek India Pvt. Ltd, the Union industry and other interested parties known to be concerned of the initiation of the exemption investigation, and invited them to participate.

(14) Interested parties were given the opportunity to make their views known in writing and request a hearing with the Commission and/or the Hearing Officer in trade proceedings within the time limits set out in the Notice of Initiation.

3. PRODUCT CONCERNED

(15) The product subject to the present investigation is open mesh fabrics of glass fibres, of a cell size of more than 1,8 mm both in length and in width and weighing more than 35 g/m², excluding glass fibre discs, originating in the PRC, consigned from India, whether declared as originating in India or not, currently falling within CN codes ex 7019 51 00 and ex 7019 59 00 (TARIC codes 7019 51 00 14, 7019 59 00 14).

4. INVESTIGATION

(a) Scope of the investigation

(16) The scope of the investigation is limited to assessing whether it would be appropriate to extend the temporal scope of the exemption to the period between 21 December 2013 and 10 September 2015.

(b) Pyrotek India Pvt. Ltd

(17) Pyrotek India Pvt. Ltd is an Indian subsidiary of the US-based multinational group Pyrotek. The Pyrotek group is a supplier of various sorts of consumables and tools to the metal and aluminium industry.

(18) The applicant produces the product under review in its Indian plant in Chennai and sells it to its related companies in the Union. The related companies in the Union in the majority of the cases further process the product under review and sell the resulting product to the final customers.

(c) Findings of the investigation

(19) It is recalled that the Commission had established in its earlier partial interim review ([1]) that Pyrotek India Pvt. Ltd is a genuine producer of the product concerned and that it did not engage in circumvention practices.

(20) As set out in recital (6), Pyrotek India Pvt. Ltd had exported the product concerned during the period of the anti-circumvention investigation leading to the extension of measures to India, that is to say, from 1 April 2012 to 31 March 2013, and had paid anti-dumping duties on its exports to the Union pursuant to Implementing Regulation (EU) No 1371/2013.

(21) As set out in recital (11), on 10 September 2015, by Implementing Regulation (EU) 2015/1507, Pyrotek India Pvt. Ltd obtained an exemption from the extended measures for exports to the Union as of 11 September 2015. However, the starting date of this exemption did not cover the period before that date, in which anti-dumping duties had to be paid on the exports of Pyrotek India Pvt. Ltd to the European Union.

(22) The Commission has re-assessed the situation and found that Pyrotek India Pvt. Ltd's exports to the Union during the period of 21 December 2013 to 10 September 2015 should be excluded from the payment of the anti-circumvention duty.

(23) No interested party came forward within the deadline set in the Notice of Initiation. Nor did any interested party make its views known in writing or request a hearing with the Commission or the Hearing Officer in trade proceedings.

([1]) Implementing Regulation (EU) 2015/1507, recitals (12) to (16).

(24) The Commission therefore considers that it would be appropriate to grant an exemption to Pyrotek India Pvt. Ltd. That exemption should apply to the period between 21 December 2013 and 10 September 2015 in accordance with Article 11(3) of the basic Regulation.

(25) Therefore, Implementing Regulation (EU) No 1371/2013 should be amended in order to clarify that the exemptions granted to Montex Glass Fibre Industries Pvt. Ltd and to Pyrotek India Pvt. Ltd both apply as from the date of entry into force of Regulation (EU) No 1371/2013, that is to say, as from 21 December 2013, until the entry into force of Implementing Regulation (EU) 2015/1507 on 11 September 2015. Article 1(2) of Implementing Regulation (EU) No 1371/2013 should be amended accordingly.

(26) In addition, further to the comments submitted by Pyrotek India Pvt. Ltd after disclosure, the Commission deems it appropriate to clarify that any anti-dumping duty paid for the product concerned produced by Pyrotek India Pvt. Ltd and imported into the Union during the period of registration of the goods set out by Regulation (EU) No 322/2013 should also be eligible for applications for remission or repayment.

(27) Therefore, it is appropriate to extend the period referred to in Article 121(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council [1] until 1 September 2019 so as to ensure that the duty unduly paid may be repaid or remitted from the national customs authorities in accordance with the applicable customs legislation in cases where the time limits provided for in that paragraph expired before the date of application of this Regulation.

5. **PROCEDURE**

(28) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 1371/2013 shall be amended as follows.

(1) Article 1(2) shall be replaced by the following:

‘2. The application of the exemption granted to Montex Glass Fibre Industries Pvt. Ltd and to Pyrotek India Pvt. Ltd shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall be in compliance with the requirements set out in the Annex to this Regulation. Where no such invoice is presented, the anti-dumping duty provided for in paragraph 1 shall apply.

The exemptions granted to Montex Glass Fibre Industries Pvt. Ltd and to Pyrotek India Pvt. Ltd shall apply as from 21 December 2013.’;

(2) Article 1(4) shall be replaced by the following:

‘4. Unless otherwise specified, the provisions in force concerning customs duties shall apply. The period referred to in Article 121(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council (*) shall be extended until 1 September 2019 for applications for remission or repayment lodged by Montex Glass Fibre Industries Pvt. Ltd and Pyrotek India Pvt. Ltd in accordance with the applicable customs legislation in order to cover the repayment or remission of anti-dumping duties for imports of the product concerned during the period 21 December 2013 to 10 September 2015, or during the period of registration imposed by Article 2 of Regulation (EU) No 322/2013.

(*) OJ L 269, 10.10.2013, p. 1.’.

Article 2

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

[1] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

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

Done at Brussels, 13 November 2018.

For the Commission
The President
Jean-Claude JUNCKER