COMMISSION IMPLEMENTING REGULATION (EU) 2023/1595

of 3 August 2023

accepting a request for new exporting producer treatment with regard to the definitive anti-dumping measures imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China and amending Implementing Regulation (EU) 2019/1198

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'),

Having regard to Commission Implementing Regulation (EU) 2019/1198 of 12 July 2019 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China ([2]), and, in particular, Article 2 thereof,

Whereas,

A. **MEASURES IN FORCE**

(1) On 13 May 2013, the Council imposed a definitive anti-dumping duty on imports into the Union of ceramic tableware and kitchenware ('the product concerned') originating in the People's Republic of China ('the PRC') by Council Implementing Regulation (EU) No 412/2013 ([3]) ('the original Regulation').

(2) On 12 July 2019, following an expiry review pursuant to Article 11(2) of the basic Regulation, the Commission extended the measures of the original Regulation for another five years by Implementing Regulation (EU) 2019/1198.

(3) On 28 November 2019, following an anti-circumvention investigation pursuant to Articles 13(3) of the basic Regulation, the Commission amended Implementing Regulation (EU) 2019/1198 by Commission Implementing Regulation (EU) 2019/2131 ([4]).

(4) In the original investigation, sampling was applied for investigating the exporting producers in the PRC in accordance with Article 17 of the basic Regulation.

(5) The Commission imposed individual anti-dumping duty rates ranging from 13,1 % to 18,3 % on imports of ceramic tableware and kitchenware for the sampled exporting producers from the PRC. For the cooperating exporting producers that were not included in the sample, a duty rate of 17,9 % was imposed. The cooperating exporting producers not included in the sample are listed in Annex 1 of Implementing Regulation (EU) 2019/2131. Furthermore, a country-wide duty rate of 36,1 % was imposed on the product concerned from companies in the PRC which either did not make themselves known or did not cooperate with the investigation.

(6) Pursuant to Article 2 of Implementing Regulation (EU) 2019/1198, Annex 1 of that Regulation can be amended by granting a new exporting producer the duty rate applicable to the cooperating companies not included in the sample, namely the weighted average duty rate of 17,9 %, where that new exporting producer in the PRC provides sufficient evidence to the Commission that:

(a) it did not export to the Union the product concerned during the period of investigation on which the measures are based, that is from 1 January 2011 to 31 December 2011 ('the original investigation period');

([1]) OJ L 176, 30.6.2016, p. 21.
([2]) OJ L 189, 15.7.2019, p. 8.
([3]) Council Implementing Regulation (EU) No 412/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China (OJ L 131, 15.5.2013, p. 1).
([4]) Commission Implementing Regulation (EU) 2019/2131 of 28 November 2019 amending Implementing Regulation (EU) 2019/1198 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 321, 12.12.2019, p. 139).

(b) it is not related to any of the exporters or producers in the PRC which are subject to the anti-dumping measures imposed by Implementing Regulation (EU) 2019/1198; and

(c) it has actually exported to the Union the product concerned after the original investigation period or has entered into an irrevocable contractual obligation to export a significant quantity to the Union.

B. **REQUEST FOR NEW EXPORTING PRODUCER TREATMENT**

(7) The company Chaozhou Jingmei Craft Products Co., Ltd. (Jingmei or 'the applicant') submitted a request to the Commission to be granted new exporting producer treatment ('NEPT') and hence be subject to the duty rate applicable to the cooperating companies in the PRC not included in the sample, which is 17,9 %. The applicant claimed that it met all three conditions set out in Article 2 of Implementing Regulation (EU) 2019/1198 ('the NEPT conditions').

(8) In order to determine whether the applicant fulfilled the NEPT conditions, the Commission first sent a questionnaire to the applicant requesting evidence showing that it met the NEPT conditions.

(9) Following the analysis of the questionnaire reply, the Commission requested further information and supporting evidence, which was submitted by the applicant.

(10) The Commission sought to verify all information it deemed necessary for the purpose of determining whether the applicant met the NEPT conditions. To this end, the Commission analysed the evidence submitted by the applicant in its questionnaire and deficiency letters replies; and consulted various online databases including Orbis ([5]), D&B ([6]), Qichacha, Aiqicha, Baidu ([7]), the company's Alibaba website as well as other publicly available sources. In parallel, the Commission also informed the Union industry about the applicant's request and invited it to provide any comments if needed. The Union industry provided comments which were considered.

C. **ANALYSIS OF THE REQUEST**

(11) With regard to the condition set out in Article 2(a) of the Implementing Regulation (EU) 2019/1198 that the applicant did not export the product concerned to the Union during the period of investigation on which the measures are based, that is from 1 January 2011 to 31 December 2011 ('the original investigation period'), during the investigation the Commission established that the applicant did not export the product concerned during the time.

(12) The applicant is a company that was established in 1993, but was found to have exported to the Union the product concerned only once – an indirect EU sale – in 2012, thus after the original investigation period, when the applicant sold to an Australian trader, however, dispatching this order directly to the Irish end customer (Dublin, Ireland) of this Australian trader. This indirect sale was confirmed by the shipping and other documentation submitted. As this Australian trader was an important customer of the applicant, and the Commission wanted to exclude the possibility of any other of such indirect sale to have taken place during the original investigation period via this Australian trader, it requested the submission of the full documentation of all transactions of Jingmei with this Australian trader in 2011. No evidence was found of any indirect EU sale among those transactions.

(13) The Commission also checked all relevant accounting records of the applicant for the original investigation period, including income statements, VAT return statements, sales ledgers, sales registers, sub-ledger of main business income, account payable sub-ledger of the Australian trader as well the golden tax system. All these were checked by means of video files, screenshots, photographs of physical accounting books and direct extractions from IT

([5]) Orbis is a global data provider of corporate information covering more than 220 million companies across the globe. It mainly provides standardised information on private companies and corporate structures.

([6]) Dun and Bradstreet (D&B) software solution provides commercial data, analytics, and insights for businesses on private companies and corporate structures.

([7]) Qichacha, Aiqicha, Baidu are private, for-profit Chinese-owned databases that deliver business data, credit information, and analytics on China-based private and public companies to consumers/professionals.

systems, reconciling the reported figures. All these checks did not reveal any export sale to the Union during 2011. Therefore, the Commission concluded that the applicant had demonstrated, by providing all the requested very detailed information which was found to be consistent, complete and clear, that it had not exported to the Union in the original investigation period.

(14) Consequently, the Commission concluded that the applicant complies with the condition set out in Article 2(a) of Implementing Regulation (EU) 2019/1198.

(15) With regard to the condition set out in Article 2(b) of Implementing Regulation (EU) 2019/1198 that the applicant is not related to an exporting producer that exported the product concerned to the Union in the original investigation period, during the investigation the Commission established that Jingmei is not related to any of the Chinese exporting producers that are subject to the anti-dumping measures. During the original investigation period, the applicant had three shareholders, including two natural persons. None of the natural persons was found to be related to Chinese exporting producers that are subject to the anti-dumping measures. The third shareholder – a legal entity – was not found trading the product concerned or being related to any Chinese company subject to the anti-dumping measures. In 2017 there was a change in shareholding of the applicant, when the above-mentioned legal entity as well as one of the two natural persons sold their shares to a new shareholder, who became the general manager of the applicant. This shareholding situation remained unchanged to date, with two shareholders, natural persons. The new shareholder is also director in a holding company named Guangdong Green Sunshine Tourism Co. Ltd., and in possession of 6,87 % of the shares of this company. This holding company is not involved in the product concerned. However, according to Qichacha, one of its shareholders who holds 0,41 % shares, is in parallel shareholder and director of Chaozhou Chenhui Ceramics, which is a Chinese producer subject to the currently applicable anti-dumping measures. As this relationship is very indirect and far below the threshold of 5 % (only 0,41 %), the Commission did not identify any relationship of the current shareholders as defined by the Commission Implementing Regulation (EU) 2015/2447 ([8]). Therefore, the applicant met the second criterion.

(16) Consequently, the Commission concluded that the applicant complies with the condition set out in Article 2(b) of Implementing Regulation (EU) 2019/1198.

(17) With regard to the condition set out in Article 2(c) of the Implementing Regulation (EU) 2019/1198, that the applicant has actually exported the product concerned to the Union after the original investigation period or has entered into an irrevocable contractual obligation to export a significant quantity to the Union, during the investigation the Commission established that the applicant had indeed exported once to the Union (Ireland) in 2012, therefore after the original investigation period. This was an indirect sale to the Union, because the applicant sold to an Australian trader, however, dispatched the order directly to the end customer of this Australian trader to an end-customer in Dublin, Ireland. Full documentation was provided of this transaction, including order, invoice, shipping documents and bank payments and information was crosschecked through these and other documents of the application. Therefore, the applicant met the third criterion.

(18) Consequently, the Commission concluded that the applicant complies with the condition set out in Article 2(c) of Implementing Regulation (EU) 2019/1198.

(19) Accordingly, the Commission concluded that the applicant fulfils all three conditions to be granted NEPT, as set out in Article 2 of Implementing Regulation (EU) 2019/1198 and the request should therefore be accepted. Consequently, the applicant should be subject to an anti-dumping duty of 17,9 % for cooperating companies not included in the sample of the original investigation.

([8]) Article 127 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558) (the EU Customs Code), stipulates that two persons shall be deemed to be related if one of the following conditions is fulfilled: (a) they are officers or directors of the other person's business; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) a third party directly or indirectly owns or controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they control a third person directly or indirectly; (h) they are members of the same family. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related only if they fall within the criteria referred to in the preceding sentence.

D. **DISCLOSURE**

(20) The applicant and the Union industry were informed of the essential facts and considerations based on which it was considered appropriate to grant the anti-dumping duty rate applicable to the cooperating companies not included in the sample of the original investigation to Chaozhou Jingmei Craft Products Co., Ltd.

(21) The parties were granted the possibility to submit comments. No comments were received.

(22) The Regulation is in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The following company is added to Annex 1 of Implementing Regulation (EU) 2019/2131 containing the list of cooperating companies not included in the sample:

Company	TARIC additional code
'Chaozhou Jingmei Craft Products Co., Ltd.	C933'

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, 3 August 2023.

For the Commission
The President
Ursula VON DER LEYEN