COMMISSION IMPLEMENTING REGULATION (EU) 2022/2268

of 18 November 2022

terminating the 'new exporter' review of Implementing Regulation (EU) 2019/1379 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China following an interim review pursuant to Article 11(4) of Regulation (EU) 2016/1036 of the European Parliament and of the Council and terminating the registration of imports

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') and in particular Article 11(4) thereof,

Whereas:

1. MEASURES IN FORCE

(1) By Regulation (EEC) No 2474/93 ([2]) ('the original investigation'), the Council imposed a definitive anti-dumping duty of 30,6 % on imports of bicycles originating in the People's Republic of China ('China'). Several investigations followed since then, which extended or amended the initial measures.

(2) By Regulation (EU) No 502/2013 ([3]), the Council, following an interim review pursuant to Article 11(3) of the Council Regulation (EC) No 1225/2009 ([4]), amended the measures. In that investigation, sampling was not applied for exporting producers in China and the countrywide anti-dumping duty of 48,5 %, based on the dumping margin, established by Council Regulation (EC) No 1095/2005 ([5]), was maintained.

(3) The measures currently in force are anti-dumping measures imposed by Commission Implementing Regulation (EU) 2019/1379 ([6]), under which imports of the product under review produced by the applicant are subject to a definitive anti-dumping duty of 48,5 %.

2. CURRENT INVESTIGATION

2.1. Request for a review

(4) The Commission received a request for a 'new exporter' review under Article 11(4) of the basic Regulation. The request was lodged on 10 September 2019 and updated on 26 November 2021 by Zhejiang Feishen Vehicle Industry Co., Ltd ('the applicant'), an exporting producer of bicycles in China.

([1]) OJ L 176, 30.6.2016, p. 21.

([2]) Council Regulation (EEC) No 2474/93 of 8 September 1993 imposing a definitive anti-dumping duty on imports into the Community of bicycles originating in the People's Republic of China and collecting definitively the provisional anti-dumping duty (OJ L 228, 9.9.1993, p. 1).

([3]) Council Regulation (EU) No 502/2013 of 29 May 2013 amending Implementing Regulation (EU) No 990/2011 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China following an interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ L 153, 5.6.2013, p. 17).

([4]) 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).

([5]) Council Regulation (EC) No 1095/2005 of 12 July 2005 imposing a definitive anti-dumping duty on imports of bicycles originating in Vietnam, and amending Regulation (EC) No 1524/2000 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China (OJ L 183, 14.7.2005, p. 1).

([6]) Commission Implementing Regulation (EU) 2019/1379 of 28 August 2019 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China as extended to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka, Tunisia, Cambodia, Pakistan and the Philippines, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 (OJ L 225, 29.8.2019, p. 1).

(5) The applicant claimed that it was not related to any of the exporting producers of bicycles subject to the measures in force. In addition, the applicant claimed that it had only exported bicycles to the Union after the end of the investigation period of the original investigation.

2.2. **Initiation of a new exporter review**

(6) The Commission examined the evidence available and concluded that there was sufficient evidence to justify the initiation of 'new exporter' reviews pursuant to Article 11(4) of the basic Regulation. After the Union producers had been given an opportunity to comment, the Commission initiated, by Commission Implementing Regulation (EU) 2022/358 ([7]) the review of Implementing Regulation (EU) 2019/1379 with regard to the applicant.

2.3. **Product concerned**

(7) The product under review is bicycles and other cycles (including delivery tricycles, but excluding unicycles), not motorised, currently falling under CN codes 8712 00 30 and ex 8712 00 70 (TARIC codes 8712 00 70 91, 8712 00 70 92 and 8712 00 70 99) and originating in China.

2.4. **Parties concerned**

(8) The Commission officially informed the applicant, the Union industry as well as the representatives of the exporting country, of the initiation of this review. Interested parties were given the opportunity to make their views known in writing and to be heard.

(9) On the day of initiation, the Commission requested the applicant to fill in the questionnaire.

2.5. **Review investigation period**

(10) The investigation covered the period from 1 January 2021 to 31 December 2021 ('review investigation period').

2.6. **Disclosure**

(11) On 29 July 2022 the Commission disclosed to interested parties its intention to terminate the review investigation without determining individual dumping margin for the applicant. Interested parties were given the opportunity to comment.

(12) In its comments submitted on 12 August 2022 the applicant disagreed with the Commission's analysis refusing the new exporter's status on the basis of the representativity of the applicant's sales and claimed the lack of legal basis for such a decision and that it is inconsistent with the Panel and the Appellate Body reports in *Mexico – Definitive anti-dumping measures on beef and rice* ([8]).

(13) The Commission points out that the Panel and the Appellate Body examined the conditions to accept or reject a request to conduct an expedited new exporter review, as set out in Mexican law. In the present case, the Commission has accepted the request of the applicant and has dutifully initiated the new exporter review but To perform a reliable dumping margin calculation, the Commission needs a sound export price that is considered to

([7]) Commission Implementing Regulation (EU) 2022/358 of 2 March 2022 initiating a 'new exporter' review of Implementing Regulation (EU) 2019/1379 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China for one Chinese exporting producer, repealing the duty with regard to imports from that exporting producer and making these imports subject to registration (OJ L 68, 3.3.2022, p. 9).

([8]) Appellate Body Report, *Mexico – Anti-Dumping Measures on Rice*, para. 323.

reflect the normal pricing behaviour of the exporting producer concerned. As explained in recitals (25) to (28) the transaction made by the applicant cannot be used as a basis for the dumping margin calculation as it does not constitute a sufficiently accurate reflection of a normal and sustainable export pricing behaviour that could form the basis for determining an individual dumping margin that could apply to future transactions. This claim is therefore rejected.

(14) The applicant referred to several new exporters' review investigations, where the exporters only made one sales transaction and were nevertheless granted a favourable dumping margin. The applicant requested the Commission to follow consistent practice as regards the request in the current case.

(15) The reviews the applicant referred to concerned investigations where the sample average rate was indeed available. Therefore, it has not been necessary to determine the individual dumping margins. Contrary to what the applicant claims, the Commission's method to assess the new exporter's situation is consistent. In the review concerning the trichloroisocyanuric acid originating in the People's Republic of China ([9]) the Commission was unable to use the export price and this caused the termination of the review without being able to grant an individual rate to the applicant.

(16) The applicant claimed that the Commission erroneously assessed the factual evidence in the context of determination of the representativeness of the sales, the comparison of the export price with statistical data and the resale price of their customer.

(17) For the comparison of the export price, the applicant claimed that its products were positioned as high-end products and awarded design prices in international contests, therefore the comparison with mixed-pool statistics which showed a higher price is not relevant. The applicant also contested the relevance of the information provided by the Austrian importer, which defined the transaction as a trial, and claimed that from the applicant's perspective, it was an ordinary transaction and not a trial.

(18) The Commission notes that none of the applicant's arguments contained any information that would put into question the information the Commission considered in its assessment of the facts. Therefore, as such they are rejected.

(19) As an alternative, the applicant proposed the monitoring of the measures or determination of a minimum import price.

(20) The Commission cannot accept neither of those two requests submitted by the applicant. Neither the monitoring nor the minimum import price is appropriate for the situation of a new exporting producer. In the example of the pins and staples case ([10]) monitoring brought forward by the applicant, it was used to monitor the situation of the imports in a case of a non-imposition of anti-dumping measures. The minimum import price mechanism is a tool to determine the duty level over the total exports of the country concerned in proceedings where the Commission considers that this form of measure is appropriate in view of the specific circumstances of the case. In the case at hand, the measures take the form of ad valorem duties and the purpose of a newcomer review is not to review the form of measures.

([9]) Commission Implementing Regulation (EU) 2022/619 of 12 April 2022 terminating the 'new exporter' reviews of Implementing Regulation (EU) 2017/2230 imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China, for three Chinese exporting producers, imposing the duty with regard to these producers' imports and terminating the registration of these imports (OJ L 115, 13.4.2022, p. 66).

([10]) Commission Implementing Decision (EU) 2020/1202 of 14 August 2020 terminating the anti-dumping proceeding concerning imports of pins and staples originating in the People's Republic of China and subjecting imports of pins and staples originating in the People's Republic of China to surveillance (OJ L 269, 17.8.2020, p. 40).

3. RESULTS OF THE INVESTIGATION

3.1. 'New exporting producer' criteria

(21) Pursuant to Article 11(4) of the basic Regulation, the criteria to be met for a new exporting producer are the following:

(a) it did not export to the Union the product concerned during the period of investigation on which the measures are based;

(b) it is not related to any of the exporters or producers in China which are subject to the anti-dumping measures in force; 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.

(22) The investigation confirmed that the applicant had not exported the product concerned during the original investigation period.

(23) The applicant demonstrated that it is not related to any of the Chinese exporting producers subject to the anti-dumping measures in force with regard to the product concerned.

(24) Regarding the criterion that the applicant had started exporting the product concerned to the Union after the original investigation period the Commission assessed the following. The applicant only made one single export transaction of a limited volume during the review investigation period ('RIP'), therefore the Commission examined whether that export transaction could be deemed sufficient to provide an accurate reflection of the applicant's current and future export behaviour. Specifically, the Commission further analysed the share of the exported quantity in relation to total production and the sales prices to the EU in relation to the average prices of other Chinese exporting producers who exported significant volumes to the EU during the RIP.

(25) The applicant made a single sale of 30 children's bicycles, representing 1 % of its total production, to an Austrian importer. The price of the applicant's transaction at CIF level was 73 % ([11]) higher than the average price of other Chinese exporting producers in the Austrian market. This indicated that this transaction was not made under normal commercial terms.

(26) The Commission contacted the importer to obtain further information about the nature of the transaction and the resale value.

(27) The Austrian importer also confirmed that this was just a trial transaction (not an ordinary business transaction), that the purchase price was too high and that consequently it resold the bicycles to final customers at a price lower than the purchase price.

3.2. Conclusion

(28) In light of the above, the Commission considered that the transaction submitted by the applicant did not constitute a sufficiently representative basis and did not provide a sufficiently accurate reflection of its current and future export pricing behaviour that could form the basis for determining an individual dumping margin. On this basis, the review investigation should be terminated.

([11]) Comparison between the price at which the company sold in the EU with the average import price from China in the specific EU market in the same period. This comparison was made at CIF level, i.e. the price at which the bicycles arrived at the EU border. Considering the 48,5 % anti-dumping duty, the price was 99 % higher.

4. LEVYING OF AN ANTI-DUMPING DUTY

(29) In view of the findings outlined above, the Commission concluded that the review concerning imports of bicycles manufactured by the applicant and originating in China should be terminated. The duty applicable to 'all other companies' pursuant to Article 1(2) of Implementing Regulation (EU) 2019/1379 should apply to products manufactured by the applicant. Consequently, the registration of the applicant's imports should cease and the country-wide duty applicable to all other companies (48,5 %), imposed by Implementing Regulation (EU) 2019/1379, should be levied on these imports from the date of initiation of this review. This is without prejudice to the possibilities of importers asking for a refund in accordance with Article 11(8) of the basic Regulation.

(30) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The 'new exporter' review initiated by Implementing Regulation (EU) 2022/358 is hereby terminated.

2. Article 2 of Implementing Regulation (EU) 2022/358 is hereby repealed.

3. The anti-dumping duty applicable according to Article 1 of Implementing Regulation (EU) 2019/1379 to 'all other companies' in the People's Republic of China (TARIC additional code B999) hereby applies to imports of products manufactured by Zhejiang Feishen Vehicle Industry Co., Ltd.

Article 2

1. The customs authorities are hereby directed to cease the registration of imports carried out pursuant to Article 3 of Implementing Regulation (EU) 2022/358.

2. The anti-dumping duty referred to in Article 1(3) is hereby levied with effect from 3 March 2022 on the products which were registered pursuant to Article 3 of Implementing Regulation (EU) 2022/358.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 3

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, 18 November 2022.

For the Commission
The President
Ursula VON DER LEYEN