

Commission européenne, B-1049 Bruxelles – Belgium
European Commission
Directorate-General for Trade
Directorate G – Trade Defence
Investigations IV- Relations with third countries for Trade Defence matters
Trade.G5/PDB/t21.005040

Subject: Procedural errors in R722: Expiry review of the anti-dumping measures applicable to imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan Definitive Disclosure

Riegel, 12.07.2021

Dear Ladies and Gentlemen,

1. We hereby refer to the Communication of the European Commission dated July 2, 2021, Trade.G5/PDB/t21.005040, Subject: R722: Expiry review of the anti-dumping measures applicable to imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan - Definitive Disclosure.
2. We would hereby like to draw your attention to an unauthorized change in the draft resolution referred to at the beginning. This change in the anti-dumping measure violates applicable EU law.
3. Four CN codes were inserted there that were not included in the original COMMISSION IMPLEMENTING REGULATION (EU) 2015/1429 of 26 August 2015 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan.
4. **The original COMMISSION IMPLEMENTING REGULATION (EU) 2015/1429 of 26 August 2015 states:**
5. 2.PRODUCT CONCERNED AND LIKE PRODUCT
6. 2.1. Introduction (13)
7. As set out in recital 26 of the provisional Regulation, the product concerned is flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced) originating in the PRC and Taiwan, currently falling within CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81 and 7220 20 89 ('the product concerned').
8. Source: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.224.01.0010.01.ENG

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9. **The Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (2020/C 280/06), dated August 25, 2020, already contains the unauthorized added CN codes. It also clearly states that the request for review was submitted by the European Steel Association (EUROFER). And explains that they are existing measures.**
10. 1. Request for review The request was lodged on 27 May 2020 by the European Steel Association ('EUROFER'), ('the applicant'), representing more than 25 % of the total Union production of stainless steel cold-rolled flat products.
11. An open version of the request and the analysis of the degree of support by Union producers for the request are available in the file for inspection by interested parties. Section 5.6 of this Notice provides information about access to the file for interested parties.
12. 2. Product under review The product subject to this review is flat-rolled products of stainless steel, not further worked than cold-rolled (coldreduced), currently falling under CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20 and 7220 90 80.
13. 3. Existing measures The measures currently in force are definitive anti-dumping duties imposed by Commission Implementing Regulation (EU) 2015/1429 (3) (4).
14. Source: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2020.280.01.0006.01.ENG
15. **Also, the note clearly clarifies that this is an Expiry Review.**
16. Possibility to request a review under Article 11(3) of the basic Regulation
17. As this expiry review is initiated in accordance with the provisions of Article 11(2) of the basic Regulation, the findings thereof will not lead to the existing measures being amended but will lead to those measures being repealed or maintained in accordance with Article 11(6) of the basic Regulation.

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18. If any interested party considers that a review of the measures is warranted so as to allow for the possibility to amend the measures, that party may request a review pursuant to Article 11(3) of the basic Regulation.

19. Parties wishing to request such a review, which would be carried out independently of the expiry review mentioned in this Notice, may contact the Commission at the address given above.

20. Source: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2020.280.01.0006.01.ENG

21. The GENERAL DISCLOSURE DOCUMENT R722 Expiry review concerning imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan, from July 2, 2021, states that:

22. 2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

23. 2.1. Product under review

24. (27) The product under review is the same as in the original investigation, namely flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced), currently falling under CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20 and 7220 90 80 ('product under review' or 'SSCR').

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27. **See explanations in the European Commission's reviews document, tradoc_151019. It states:**

28. Expiry review

29. What can be the result?

30. An expiry review can result only in the repeal or continuation of the duties in force. If measures are maintained, they will normally remain in force for another five years. An expiry review cannot lead to a change in the level or form of the duties; these can only be changed by an interim review.

31. Source: https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151019.pdf

32. What is an interim review?

33. Anti-dumping measures are usually imposed for 5 years. However, interested parties may ask for a review during that time:

- a. any exporter, importer or Community producer: once the measures have been in force for 1 year.
- b. an EU country or the Commission itself: at any time. An interim review can be 'full' – covering dumping, injury and Community interest – or 'partial' – limited to dumping, for example.

34. Source: https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151019.pdf

35. **Alternatively, this is also stated in 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 Article 11, par. 2 - 4 in conjunction with Article 11, par. 6.**

36. Where warranted by reviews, measures shall, in accordance with the examination procedure referred to in Article 15(3), be repealed or maintained pursuant to paragraph 2 of this Article, or repealed, maintained or amended pursuant to paragraphs 3 and 4 of this Article.

37. Source: <https://eur-lex.europa.eu/eli/reg/2016/1036/2020-08-11>

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38. **Where do these new CN codes come from?**

39. **The CN codes in question (7219 90 20, 7219 90 80, 7220 90 20 and 7220 90 80) were added at the request of the complaining party EUROFER. This can be seen in the document REQUEST FOR THE INITIATION OF AN EXPIRY REVIEW dated 26 May 2020 (Ref. Ares (2020)2739979 - 27/05/2020). There the added CN codes are mentioned on page 13.**

40. 3.4 Definition of the product concerned

41. 60. The product subject to this review is flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced), currently falling under CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20 and 7220 90 80.

42. **On page 11, the EUROFER requests from the European Commission:**

43. While the various surface finishes do not affect the essential characters of SSCR, they may have an impact on their custom classification. That distinction resulting of surface finishing has led to an inconsistency in the scope of application of the original measures which unduly exempted imported polished SSCR from the duties while they were consistently accounted for in the initial complaint and investigation. The Applicant therefore respectfully requests the Commission to reassess that situation in the context of the present application in order to ensure consistency of the product scope.

44. Annex 5. SSCR products finishes

45. **The original "Notice of initiation of an anti-dumping proceeding concerning imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (2014/C 196/07)" does not mention these CN codes.**

46. **There it says:**

47. 3. Allegation of dumping

48. The product allegedly being dumped is the product under investigation, originating in the People's Republic of China and Taiwan ('the countries concerned'), currently falling within CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81 and 7220 20 89. These CN codes are given for information only.

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49. Source: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_2014_196_R_0007&from=EN

50. And also in the “COMMISSION IMPLEMENTING REGULATION (EU) 2015/1429 of 26 August 2015 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan”, these CN codes do not apply.

51. There it says:

52. 2. PRODUCT CONCERNED AND LIKE PRODUCT

53. 2.1. Introduction

54. (13) As set out in recital 26 of the provisional Regulation, the product concerned is flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced) originating in the PRC and Taiwan, currently falling within CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81 and 7220 20 89 (‘the product concerned’).

55. Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R1429&from=EN>

56. Subsumption

57. The case at hand is a so-called Expiry Review. According to the applicable EU regulations, this may not be changed, but only continued or repealed without changes. We have already made this clear.

58. An Expiry Review is not a Circumvention of measures investigation.

59. According to Article 13, paragraph 3, of Regulation (EU) 2016/1036, an anti-circumvention investigation should have been initiated for this. This did not happen.

60. The claim made by EC staff during our trade hearing on July 8, 2021, that the extension of the four additional categories into an Expiry Review is intended to counter a circumvention of measures, is therefore obsolete and already wrong in its basic statement. Moreover, this would be illegal under current EU law. It also places all importers of these products under general suspicion.

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61. A circumvention of measures investigation cannot be present because a) it was an Expiry Review, b) the EC's justification for the anti-dumping extension does not mention a circumvention of the measures and c) there is no evidence for an alleged circumvention by EUROFER (see e.g., "7.4. 1 Indication of circumvention of the AD measures on SSCR" in the EUROFER Request for the initiation of an expiry review or the SSCR Expiry Annexes, e.g., "SSCR PRODUCTS FINISHES, from point 1. SSCR FINISHES AND PRODUCT SCOPE to point 4. THE PRODUCT SCOPE IN THE REGULATIONS AND THE INVESTIGATION COVERS PRODUCTS FALLING UNDER THE "OTHER" SUBHEADINGS") has not been provided and is also not relevant or permitted in an Expiry Review according to applicable EU law.
62. Since the claiming party EUROFER, as its letter of May 26, 2020, clearly proves, has submitted a Request for the initiation of an Expiry Review, all allegations of EUROFER regarding a Circumvention of the measures in the submitted documents are not pertinent to the matter and are to be ignored and deleted as a basis for decision by the relevant EC representatives.
63. Also, an absorption investigation according to Article 12 paragraph 1 to 5, of Regulation (EU) 2016/1036 would have required a separate investigation. This did not happen.
64. There is also no Interim Review under Article 11, paragraph 3, Regulation (EU) 2016/1036, this would have required a separate investigation. This did not happen. Only an Interim Review, unlike an Expiry Review, can bring about a change in existing measures.
65. As we have already explained, new products (CN codes 7219 90 20, 7219 90 80, 7220 90 20 and 7220 90 80) were added to an existing measure. According to Regulation (EU) 2016/1036, this is not allowed as the present proceeding is an Expiry Review.
66. Contrary to statements from the July 8, 2021, Trade Hearing by EC staff, these are also not newly introduced CN Codes created after 2014/2015. The CN codes in question were already mentioned in 2011 in the Explanatory notes to the combined nomenclature of the European Union (2011/C 137/01). But also, already in the Commission Regulation (EU) No 1241/2009 of 16 December 2009.
67. New anti-dumping duties are now to be imposed on products that have demonstrably not been subject to anti-dumping duties in the past five years. This changes the form and level of the duties in the aforementioned anti-dumping measure and, as we have already explained in detail, is a violation of applicable EU law.

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68. As we have clearly explained, significant procedural errors were made here on the part of the complaining party EUROFER and the European Commission. Therefore, all measures resulting from the extension of this anti-dumping measure must be repealed with immediate effect and retroactively. Applicable EU regulations were massively broken.
69. In the hearing, we were requested not to provide any blackened information. We are happy to comply with this request, as we have nothing to hide anyway.
70. We also request a statement from the responsible bodies within the European Commission on the facts presented.

Best Regards

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