

COMMISSION IMPLEMENTING REGULATION (EU) 2015/409**of 11 March 2015****amending Council Implementing Regulation (EU) No 917/2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 11(3) thereof,

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) On 15 September 2011 the Council imposed anti-dumping duties on imports of ceramic tiles originating in the People's Republic of China by Implementing Regulation (EU) No 917/2011 ⁽²⁾ ('the original Regulation').
- (2) A single duty rate of 26,3 % was imposed on imports of the product concerned manufactured by the following group of exporting producers:
 - Dongguan City Wonderful Ceramics Industrial Park Co., Ltd and Guangdong Jiamei Ceramics Co. Ltd (together referred to as the Wonderful group), and
 - Qingyuan Gani Ceramics Co. Ltd and Foshan Gani Ceramics Co. Ltd (together referred to as the Gani group).
- (3) As set out in recitals 96 to 98 of the original Regulation, the European Commission ('the Commission') was notified after disclosure of provisional findings that the relationship between the companies had been severed and on that basis individual duties for the Gani group and for the Wonderful group should have been applied. The request could not be accepted at that stage as its merits needed to be properly examined.

1.2. Request for a partial interim review

- (4) On 2 October 2012 the Commission received a request for a partial interim review from the Gani group.
- (5) The Gani group claimed that they were no longer related to the other two companies (the Wonderful group) as the shareholding relationship between them had ceased as of March 2011. The Gani group therefore requested an interim review of the measures in force, as the single duty rate in force was no longer appropriate.

1.3. Initiation of a partial interim review

- (6) The Commission determined, after having consulted the Advisory Committee, that such a review should therefore be opened.
- (7) On 31 January 2014, the Commission initiated a partial interim review of the measures in force on imports into the Union of ceramic tiles originating in the People's Republic of China under Article 11(3) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽³⁾.
- (8) The review was limited in scope to the examination of the ownership structure of the Gani group and, if warranted, *ex officio* of the dumping margin as far as the Gani group was concerned.
- (9) The review also covered *ex officio* the same matters as far as the Wonderful group was concerned.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ Council Implementing Regulation (EU) No 917/2011 of 12 September 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China (OJ L 238, 15.9.2011, p. 1).

⁽³⁾ OJ C 28, 31.1.2014, p. 11.

1.4. Review investigation period

- (10) The investigation of dumping covered the period from 1 January 2013 to 31 December 2013 ('the review investigation period').

1.5. Parties concerned by the investigation

- (11) The Commission invited both the Gani group and the Wonderful group to cooperate with the investigation and to reply to the Commission's questionnaires. In addition, the Commission provided an opportunity for the companies to request market economy treatment under Article 2(7) of the basic Regulation.
- (12) In the Notice of Initiation the Commission had provisionally chosen the United States of America as a third market economy country ('analogue country') within the meaning of Article 2(7)(a) of the basic Regulation and invited parties to comment on this choice.
- (13) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer for trade proceedings.

1.6. Questionnaire replies and verification visits

- (14) The Commission received questionnaire replies from both groups and also from two analogue country producers.
- (15) The Commission sought and verified all the information deemed necessary for the review. Verification visits under Article 16 of the basic Regulation were carried out at the premises of the following companies:

— Exporting producers in the country concerned:

- Dongguan City Wonderful Ceramics Industrial Park Co., Ltd;
- Guangdong Jiamei Ceramics Co. Ltd;
- Qingyuan Gani Ceramics Co. Ltd and
- Foshan Gani Ceramics Co. Ltd

— Producers in the analogue country that requested confidential treatment on the basis of risk of retaliation.

2. PRODUCT CONCERNED

- (16) The product subject to this review is the same as defined in the original Regulation, namely glazed and unglazed ceramic flags and paving, hearth or wall tiles; glazed and unglazed ceramic mosaic cubes and the like, whether or not on a backing ('the product concerned'), currently falling within CN codes 6907 10 00, 6907 90 20, 6907 90 80, 6908 10 00, 6908 90 11, 6908 90 20, 6908 90 31, 6908 90 51, 6908 90 91, 6908 90 93 and 6908 90 99.

3. DUMPING

3.1. Market Economy Treatment

- (17) Neither group requested market economy treatment under Article 2(7)(c) of the basic Regulation.

3.2. Analogue Country

- (18) As set out above, the Commission proposed the United States of America as analogue country, as it had been in the previous investigation. The Commission also contacted companies in a number of other possible analogue countries, but received no replies or cooperation from any other company. The choice of the United States of America was therefore confirmed as appropriate.

3.3. Investigation

- (19) The investigation leading to the imposition of the measures in force established that the Gani group and the Wonderful group were related, in so far as one of the shareholders of the Wonderful group owned more than 5 % of the shares in a company in the Gani group. Dumping margins were calculated separately for each of the groups. The injury margins for the two groups were higher than the dumping margins.

- (20) To take into account the risk that, due to their corporate links, the companies with the higher individual dumping margin could channel their exports through the companies with the lower dumping margin, a single weighted average dumping margin was then calculated for both groups and a single duty rate imposed.
- (21) The Commission examined whether the alleged change in the relationship would render the single duty rate to be no longer justified. Subsequently, the Commission examined the need for the review of the individual dumping margins.
- (22) The review investigation revealed that the shares referred to in recital 19 were sold to the owner of the Gani group and the Wonderful group has no longer a stake in the Gani group. There were no indications that the two groups would have any other structural or corporate links. Accordingly, the change of the relationship between the two groups was accepted as claimed and the Gani group and the Wonderful group were considered no longer related for the purposes of specifying the duty.
- (23) It follows that there are no longer reasons for the imposition of a single duty rate. Instead, separate individual duty rates should be assigned to the Gani group and the Wonderful group.
- (24) As to the need for reviewing the individual dumping margins as calculated for each of the groups in the investigation leading to the imposition of the measures in force, the Commission assessed whether the circumstances with regard to the two groups concerned had changed significantly so that it would warrant the review of these individual dumping margins.
- (25) The investigation leading to the imposition of the measures in force established the following:
- (1) they did not share production facilities;
 - (2) they did not share sales companies; and
 - (3) they did not subcontract for each other.
- (26) The review investigation confirmed that this situation remained unchanged despite the change in relationship.
- (27) In these specific circumstances, the Commission considered that the cessation of the relationship did not change the functioning of each of the two groups in any way that has a bearing on the calculation of their dumping margins. Therefore, amending these dumping margins on the basis of new calculations is not warranted under Article 11(3) of the basic Regulation.
- (28) In view of the above, the separate dumping margins calculated in the original investigation should be imposed as individual duties. These dumping margins are 13,9 % for the Gani group and 32,0 % for the Wonderful group.
- (29) These findings were disclosed to interested parties and they were given time to comment.
- (30) The Wonderful group first claimed that they had informed the Commission during the verification visit in the People's Republic of China that some of the evidence submitted by the Gani group in the request for review was false or misleading. They pointed out that the Commission has at its disposal Article 18 of the basic Regulation for this type of situation. They also questioned whether the provisions of Article 11(3) of the basic Regulation had been complied with in this respect.
- (31) The Commission has verified all the relevant and duly documented evidence collected during the investigation, which showed that the two groups were no longer related to each other, as well as the evidence with regard to the functioning of each of the two groups, both before and after the cessation of the relationship. This evidence confirms that the group has irrevocably split in two, a fact that is not contested by the Wonderful Group.
- (32) On the basis of these facts, the Commission has no ground for applying Article 18 of the basic Regulation. In addition, these facts confirm that Article 11(3) of the basic Regulation was complied with.
- (33) Secondly the Wonderful group questioned whether the provision that 'the amount of the anti-dumping duty shall not exceed the margin of dumping established' in Article 9(4) of the basic Regulation has been complied with, on the grounds that new export prices and analogue country normal values were verified during this investigation.
- (34) As set out in recitals 24 to 27 above, the investigation revealed that the functioning of each of the two groups did not change as a result of the cessation of the relationship. As also explained in the Notice of Initiation, in this case no new dumping margins were required. Article 9(4) of the basic Regulation has been complied with, as the amount of the anti-dumping duty does not exceed the margin of dumping, as established in the original investigation. The fact that new export prices and analogue country normal values were also verified during this investigation does not change this conclusion.

- (35) Finally the Wonderful group suggested that ‘giving individual margins to companies which were once related but where that relationship has been ended’ is a dangerous precedent to set and allows for a group of companies to manipulate trade defence measures.
- (36) The Commission disagreed with this suggestion. Every review is carried out on its own merits as established by the investigation and not on speculation, and where companies are not related to each other they are entitled to their own individual duty as set out in Article 9(5) of the basic Regulation.
- (37) The Union industry association Cerame-Unie (CET) argued that the end of the shareholding relationship does not mean that the possibility of circumvention via the group with the lowest duty can be eliminated. To illustrate this, CET noted that the timing of the two groups being split coincided with the imposition of provisional measures in the original case, and that the two groups did not discuss a split prior to the initiation of the original case. During the original investigation the groups were related and therefore CET submitted that the Gani group and the Wonderful group had access to each other’s data.
- (38) However CET did not provide any evidence to back up these assumptions. In addition, the Commission is under an obligation to impose individual duties on each of the two groups now as it has been established that they are no longer related to each other. The Commission is not entitled to consider two legally separate company groups as related for the purpose of imposing a single duty rate simply because of the mere possibility that the two groups might collaborate together.
- (39) CET argued that if the business operations of the two groups have remained unchanged, as has been disclosed, then the risk of circumvention between the two groups must also have remained unchanged.
- (40) The Commission dismissed this argument. The only reason why the two groups were treated as one in the original investigation was due to the ownership link, and this fact has now disappeared.
- (41) CET also noted that the locations of the production facilities of the two companies are relatively close to each other, which would make physical circumvention of the measures relatively simple.
- (42) The Commission dismissed this argument as well. Indeed, there is no legal basis to give unrelated companies the same duty, merely because of the fact that companies are relatively close to each other and therefore circumvention is simpler. It is common in the People’s Republic of China to have many producers of a particular product in one city or area.
- (43) In view of the above, the comments received after disclosure did not change the conclusion as set out in recital 28 above. Therefore, the separate dumping margins calculated in the original investigation should be imposed as individual duties. These dumping margins are 13,9 % for the Gani group and 32,0 % for the Wonderful group.
- (44) 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

The table in Article 1(2) of Implementing Regulation (EU) No 917/2011 shall be amended as follows:

— the line below shall be removed from the table:

Company	Duty	TARIC additional code
‘Dongguan City Wonderful Ceramics Industrial Park Co., Ltd; Guangdong Jiamei Ceramics Co. Ltd; Qingyuan Gani Ceramics Co. Ltd; Foshan Gani Ceramics Co. Ltd	26,3 %	B011’

— the following lines shall be inserted into the table:

Company	Duty	TARIC additional code
‘Dongguan City Wonderful Ceramics Industrial Park Co., Ltd; Guangdong Jiamei Ceramics Co. Ltd	32,0 %	B938
Qingyuan Gani Ceramics Co. Ltd; Foshan Gani Ceramics Co. Ltd	13,9 %	B939’

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, 11 March 2015.

For the Commission

The President

Jean-Claude JUNKER
