

COMMISSION IMPLEMENTING DECISION (EU) 2021/2145**of 3 December 2021****not to suspend the definitive anti-dumping duties on imports of birch plywood originating in Russia imposed by Implementing Regulation (EU) 2021/1930**

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 14(4) thereof,

After consulting the Committee established by Article 15(2) of the basic Regulation,

Whereas:

1. PROCEDURE

- (1) On 14 October 2020, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of birch plywood originating in Russia on the basis of Article 5 of the basic Regulation. On 11 June 2021, the Commission imposed a provisional anti-dumping duty on imports of birch plywood originating in Russia by Commission Implementing Regulation (EU) 2021/940 ⁽²⁾ ('the provisional Regulation').
- (2) Following provisional disclosure, several parties alleged that a change of market conditions had occurred after the investigation period ('IP') (1 July 2019 to 30 June 2020) and claimed that the imposition of definitive measures would not be justified in light of those changes.
- (3) On 18 August 2021, in the context of the investigation, the Commission requested interested parties in the Union to provide information pertaining to the post-IP period (July 2020 to June 2021) to examine and assess the impact, if any, of the alleged changed circumstances on the Union market. Information was received from the three sampled Union producers, a non-sampled Union producer, the Complainants and 63 interested parties including users, importers, associations and other Union producers. The sampled Union producers provided the requested information relating to certain indicators.
- (4) On 31 August 2021, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of birch plywood originating in Russia, which were based on the situation during the investigation period given that the alleged post-IP developments were considered to be of a temporary nature. All parties were granted a period within which they could make comments. Following final disclosure, several interested parties requested the suspension of the anti-dumping measures pursuant Article 14(4) of the basic Regulation referring to the alleged market changes after the IP that would put into question the need to collect duties after their imposition. In light of the information available, the Commission decided to examine whether a suspension of the definitive anti-dumping measures, if any, under Article 14(4) of the basic Regulation would be warranted.
- (5) On 11 October 2021, the Commission disclosed its intention not to suspend the measures under Article 14(4) of the basic Regulation. All parties were granted a period within which they could make comments.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Commission Implementing Regulation (EU) 2021/940 of 10 June 2021 imposing a provisional duty on imports of birch plywood originating in Russia (OJ L 205, 11.6.2021, p. 47).

- (6) Subsequently, on 9 November 2021 the Commission imposed definitive anti-dumping duties ⁽³⁾ on birch plywood from Russia ranging from 14,40 % to 15,80 %. At the same time, it announced that a decision with regard to a possible suspension would be taken at a later stage.

2. EXAMINATION OF CHANGED MARKET CONDITIONS

- (7) Article 14(4) of the basic Regulation provides that, in the Union interest, anti-dumping measures may be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of such suspension. It follows that anti-dumping measures can only be suspended in a situation where the circumstances have changed to such an extent that the Union industry is no longer materially injured.

2.1. Findings of the anti-dumping investigation

- (8) During the period considered (2017 - June 2020), Russian imports increased by 14 %, reaching a market share of 46 % in the IP, up from 40 % in 2017. In parallel, the Union industry's economic situation showed a negative trend in all major indicators: production (- 14 %), EU sales (- 17 %), market share (from 47 % to 39 %) and profitability (from + 10 % to - 3 %). On this basis, the Commission concluded that the Union industry suffered material injury because of the dumped imports. As regards post-IP data, the Commission considered that the allegedly abnormally high post-IP prices of the product concerned and the increase of transport were expected to be of a temporary nature responding to a post-COVID global economic recovery and rise in demand. Thus, the information available to the Commission for the post-IP period did not change the conclusions as regards material injury and causation and the imposition of duties was considered appropriate.

2.2. Post-IP situation of the Union industry

- (9) The analysis of the additional information requested by the Commission to examine the situation on the Union market after the IP under Article 14(4) of the basic Regulation showed that the situation of the Union industry had not significantly changed from its situation during the IP.
- (10) During the post-IP period, Union producers' sales in the Union to unrelated parties developed positively with an increase of 9 % when compared to the IP. However, when compared to the reference year of the period considered (namely, 2017), sales in the EU were still 15 % lower. Similarly, production volume and capacity developed positively from the IP with increases of + 11 % in production and + 4 % in production capacity, leading to an increase of capacity utilisation of 7 %. Yet, when compared to 2017, post-IP production volumes and capacity utilisation decreased by - 8 % and - 7 % respectively.
- (11) Concerning profitability, the Union industry was still loss making (- 1,1 %) during the post-IP period, far below the established target profit (9,7 %) set at the level of 2017, as during that year the Union industry was found to have operated under normal market conditions absent dumping. This shows that the Union industry only partially benefited from the increased demand since the increase in sales and prices was offset, to a large extent, by rising production costs (raw materials were similarly affected by the price increase) and delayed price adjustments due to contractual obligations.

2.3. Conclusions on the Post-IP situation of the Union industry

- (12) On the basis of the above, the Commission concluded that while the Union industry benefited from the increase of demand and to some extent also from the higher prices on the market post-IP, as showed by the positive trend of certain indicators (see recitals (10) and (11)) when compared to the IP, those signs of recovery were not strong enough to reverse the injurious situation of the Union industry, as shown by the trends when compared to 2017. Moreover, the Union industry was still loss making in the post-IP period. Hence, the Commission concluded that the evidence did not demonstrate that the market conditions had temporarily changed to an extent that injury would be unlikely to resume as a result of a suspension.

⁽³⁾ Definitive Regulation, Commission Implementing Regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of birch plywood originating in Russia (OJ L 394, 9.11.2021, p. 7).

- (13) Following the disclosure of the Commission's findings, some parties, including exporting producers, importers and users, challenged the conclusion in the anti-dumping investigation claiming that Union industry was not injured by Russian imports but by other factors. Specifically it was claimed that in the post-IP the Union industry was injured by production costs and delayed price adjustments.
- (14) The Commission recalled that the causation analysis was subject of the separate anti-dumping proceeding in which the Commission concluded that dumped imports from Russia caused material injury to the Union industry and that none of the other factors analysed, either individually or collectively, attenuated the causal link between the dumped imports and the injury suffered by the Union industry to an extent that such a link would no longer be genuine and substantial⁽⁴⁾. The examination of the elements in Article 14(4) of the basic Regulation belongs to a different matter (namely, whether injury is likely to resume if measures are suspended) and cannot re-open the analysis already made resulting in the imposition of measures. Therefore, since the claim did not refer to the Commission's findings in the context of Article 14(4), it was rejected.
- (15) Similarly, the Commission noted that in its analysis of the post-IP developments, (Section 2.2 above), it did not find that the continued injury was caused by the rising production costs. On the contrary, as explained in recital (12), the Union industry benefited from the increase of demand and to some extent also from the higher prices on the market. The Commission also noted that, regardless of what were the effects of delayed price adjustments and cost of production following the post-IP market developments, the finding of material injury caused by Russian imports during the IP was established in Commission Implementing Regulation (EU) 2021/1930 on the basis of the information concerning the period 2017 - June 2020 and was not addressed in the context of the analysis of the elements in Article 14(4) of the basic Regulation. These claims were therefore rejected.
- (16) Following the disclosure, some parties, including exporting producers, importers and users, also claimed that the Commission should carry out a prospective analysis of whether 'market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension' pursuant to Article 14(4) of the basic Regulation. Similarly, some parties also claimed that the Commission should consider the supply-demand imbalance as carried out in the proceeding concerning imports of aluminium flat-rolled products originating in China.
- (17) Concerning the prospective analysis, the Commission recalled that the analysis of post-IP data concluded that the Union industry was still injured and therefore the conditions for suspension were not met. Consequently, there were no grounds to carry out a prospective analysis of whether the injury would be unlikely to resume as a result of the suspension, given that the analysis showed Union industry continued to be materially injured in the post-IP period. Similarly, given the continuation of injury for the Union industry, the prospective analysis of the supply-demand imbalance was considered unwarranted.
- (18) Following the disclosure, Segezha Group, an exporting producer, also claimed that a duty in the form of a minimum import price ('MIP') would be the most justified form of the measure. The Commission recalled that an analysis on the form of the measures is outside the scope of the present procedure, and therefore dismissed the claim.
- (19) Following the disclosure, Syktyvkar Plywood Mill, a sampled Russian exporter producer, claimed that information provided by interested parties other than the EU producers were not referred to by the Commission in the disclosure document. The Commission recalled that there is no obligation to refer in its disclosure document to all comments from all interested parties, since the grounds for its conclusions were properly detailed and explained. The Commission noted nonetheless that all submissions and comments from the interested parties were duly examined and considered when analysing a possible suspension under Article 14(4) of the basic Regulation.
- (20) Following the disclosure, some interested parties claimed that the imposition of measures would be against the Union interest. The Commission recalled that the Union interest as regards the imposition of measures was already duly analysed in the anti-dumping proceeding (in particular, recitals (213) to (236) of the Implementing Regulation (EU) 2021/1930, concluding that there were no compelling reasons that it was not in the Union interest to impose

⁽⁴⁾ See recital (203) of the Definitive Regulation, Implementing Regulation (EU) 2021/1930.

measures on imports of birch plywood originating in Russia). It is further recalled that under Article 14(4) of the basic Regulation the Union interest analysis becomes relevant only if the Union industry is no longer injured and the injury would be unlikely to resume as a result of the suspension. Given that the analysis of post-IP developments concluded that that Union industry was still injured and, therefore, the conditions for suspension were not met, the Commission did not consider it necessary to evaluate the Union interest under Article 14(4) of the basic Regulation.

- (21) Following the disclosure, some interested parties claimed that the Commission should suspend the definitive measures on square panels. First, the Commission noted that Article 14(4) of the basic Regulation provides for suspension of measures imposed on imports of the product concerned as whole, and not part thereof. The Commission further noted that the exclusion request on square panels was addressed in the parallel antidumping proceeding, which rejected the exclusion request for square panels ⁽⁵⁾. The claim was therefore rejected.

3. CONCLUSION

- (22) Given that the examination of post-IP developments showed that the Union industry still suffered from an injurious situation, the Commission could not conclude that market conditions had temporarily changed to an extent that injury would be unlikely to resume as a result of a suspension, and that it would be in the Union interest to suspend the measures pursuant to Article 14(4) of the basic Regulation. This decision is without prejudice to the Commission's right to take a decision pursuant to Article 14(4) of the basic Regulation, should the market conditions change in the future.
- (23) Therefore, the Commission decided not to suspend the anti-dumping duties on imports of birch plywood from Russia imposed by Implementing Regulation (EU) 2021/1930,

HAS ADOPTED THIS DECISION:

Article 1

The conditions to suspend the definitive anti-dumping duty imposed by Article 1 of Implementing Regulation (EU) 2021/1930 on imports of birch plywood originating in Russia in accordance with Article 14(4) of the Regulation (EU) 2016/1036 are not met.

Article 2

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

Done at Brussels, 3 December 2021.

For the Commission
The President
Ursula VON DER LEYEN

⁽⁵⁾ See recitals (27) to (29) of the Definitive Regulation, Implementing Regulation (EU) 2021/1930.