COMMISSION REGULATION (EU) No 811/2010

of 15 September 2010

making imports of wireless wide area networking (WWAN) modems originating in the People's Republic of China subject to registration in application of Article 24(5) of Council Regulation (EC) No 597/2009 on protection against subsidised imports from countries not members of the European Community

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community [1] (the 'basic Regulation') and in particular Articles 16(4) and 24(5) thereof,

After consulting the Advisory Committee,

Whereas:

(1) The Commission has received a request, pursuant to Article 24(5) of the basic Regulation, to make imports of wireless wide area networking (WWAN) modems originating in the People's Republic of China subject to registration.

A. PRODUCT CONCERNED

(2) The product concerned by this registration is wireless wide area networking (WWAN) modems with a radio antenna and providing Internet Protocol (IP) data connectivity for computing devices and including Wi-Fi routers comprising a WWAN modem (WWAN/Wi-Fi routers), originating in the People's Republic of China ('the product concerned'), currently falling within CN codes ex 8471 80 00 and ex 8517 62 00.

B. REQUEST

(3) Having received a complaint from Option NV (hereinafter 'the applicant'), the Commission determined that there is sufficient evidence to justify initiation of a proceeding and therefore, pursuant to Article 10 of the basic Regulation, announced by a notice published in the *Official Journal of the European Union* (the 'Notice of Initiation') the initiation of an anti-subsidy proceeding concerning imports of wireless wide area networking (WWAN) modems originating in the People's Republic of China.

(4) Concerning standing to lodge a complaint, the applicant is the sole producer of the product concerned in the European Union, representing 100 % of the total Union production.

(5) As regards the existence of alleged countervailable subsidisation, the complainant has provided the European Commission with evidence of specific subsidy programmes regarding preferential loans, income tax preferential rates, benefits from establishment in free trade zones, indirect tax and import tariff programmes, grant programmes, preferential rate for government provision of goods and services and preferential policies at the level of local government.

(6) The applicant also requests that imports of the product concerned are made subject to registration pursuant to Article 24(5) of the basic Regulation so that measures may subsequently be applied against those imports from the date of such registration.

C. GROUNDS FOR THE REGISTRATION

(7) According to Article 12(1) of the basic Regulation, provisional measures may not be imposed earlier than 60 days from initiation. However, according to Article 16(4) of the basic Regulation, a definitive countervailing duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, provided that the conditions set out in that paragraph are fulfilled, and imports have been registered in accordance with Article 24(5). According to Article 24(5) of the basic Regulation, the Commission may, after consultation of the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports may be made subject to registration following a request from the Union industry which contains sufficient evidence to justify such action.

(8) The request contains sufficient evidence to justify registration.

(9) The alleged subsidies consist, inter alia, of income tax programmes (e.g. income tax exemptions or reductions under the two free/three half programme, income tax reductions for high or new technology industries, income tax credits for domestically owned companies purchasing domestically produced equipment), indirect tax and import tariff programmes (e.g. value-added tax ('VAT') and tariff exemptions on imported equipment), preferential lending schemes (e.g. policy loans including export financing from State-owned commercial banks and government policy banks), grant programmes (e.g. the Development Fund for the Electronics and Information Industry ('IT Fund'), the state key technologies renovation project fund, famous brands

[1] OJ L 188, 18.7.2009, p. 93.

awards), government provision of goods and services for less than adequate numeration (e.g. provision of land use rights) as well as of local government preferential policies, including benefits in special zones and industrial parks (e.g. preferential policies in Shenzhen, Shanghai, Beijing, Xian).

(10) It is alleged that the above schemes are subsidies since they involve a financial contribution from the Government of the People's Republic of China or other regional Governments (including public bodies) and confer a benefit to the recipients, i.e. to the exporting producers of the product under investigation. They are alleged to be contingent upon export performance and/or upon the use of domestic over imported goods and/or limited to certain enterprises or groups of enterprises and/or products and/or regions, and therefore specific and countervailable.

(11) The request provides sufficient evidence of critical circumstances where for the subsidised product in question injury which is difficult to repair is caused by massive imports benefiting from countervailable subsidies in a relatively short period of time. Evidence of such circumstances include the rapid nature of the deterioration of the situation of the Union industry, the fact that a single producer exists in the Union and the significant amount of R & D expenses that must be undertaken to generate the product concerned. Against this background, the complainant has provided evidence that imports of the product under investigation from the country concerned have increased significantly overall in absolute terms and in terms of market share. As regards the injury caused by these massive imports, the evidence provided by the complainant shows that the volume and the prices of the imported product under investigation have, among other consequences, had a negative impact on the quantities sold, the level of the prices charged and the market share held by the Union industry, resulting in substantial adverse effects on the overall performance, the financial situation and the employment situation of the Union industry. It follows that the Commission has at its disposal sufficient evidence that, in order to preclude the recurrence of such injury, it may be necessary to assess countervailing duties retroactively.

(12) Accordingly, the conditions for registration in this case are met.

D. **PROCEDURE**

(13) In the light of the above, the Commission has concluded that the applicant's request contains sufficient evidence to make imports of the product concerned subject to registration, in accordance with Article 24(5) of the basic Regulation.

(14) All interested parties are invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

E. **REGISTRATION**

(15) Pursuant to Article 24(5) of the basic Regulation, imports of the product concerned [1] should be made subject to registration in order to ensure that, should the investigation result in findings leading to the imposition of countervailing duties, those duties, can, if the necessary conditions are fulfilled, be levied retroactively in accordance with applicable legal provisions.

(16) Any future liability would emanate from the findings of the anti-subsidy investigation. It is not possible to give an estimated amount of possible future liability since this will depend on the amount of countervailable subsidies found to exist and the manner in which they would need to be allocated to the product under investigation.

F. **PROCESSING OF PERSONAL DATA**

(17) Any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data [2],

HAS ADOPTED THIS REGULATION:

Article 1

1. The Customs authorities are hereby directed, pursuant to Article 24(5) of Regulation (EC) No 597/2009, to take the appropriate steps to register the imports into the Union of wireless wide area networking (WWAN) modems with a radio antenna and providing Internet Protocol (IP) data connectivity for computing devices and including Wi-Fi routers comprising a WWAN modem (WWAN/Wi-Fi routers) originating in the People's Republic of China, currently falling within CN codes ex 8471 80 00 and ex 8517 62 00 (TARIC codes 8471 80 00 10, 8517 62 00 11 and 8517 62 00 91). Registration shall expire nine months following the date of entry into force of this Regulation

[1] For information purposes, please note that the Commission Regulation (EU) No 570/2010, OJ L 163, 30.6.2010, p. 34, already directed the customs authorities to take the appropriate steps to register imports of the product concerned from the People's Republic of China. This action was taken in respect of the request for registration made in the context of the complaint for an anti-dumping proceeding (for further details, please refer to the Notice of initiation of an anti-dumping proceeding concerning imports of wireless wide area networking (WWAN) modems originating in the People's Republic of China, (OJ C 171, 30.6.2010, p. 9).

[2] OJ L 8, 12.1.2001, p. 1.

2. All interested parties are invited to make their views known in writing, to provide supporting evidence or to request to be heard within 20 days from the date of publication of this Regulation.

Article 2

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

The Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15 September 2010.

For the Commission
The President
José Manuel BARROSO