Council Implementing Regulation (EU) No 1106/2013 of 5 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India

COUNCIL IMPLEMENTING REGULATION (EU) No 1106/2013

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imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India

THE COUNCIL OF THE EUROPEAN UNION,

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 ('the basic Regulation')[(1)], and in particular Article 9 thereof,

Having regard to the proposal submitted by the European Commission after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. **Provisional Measures**

(1) On 3 May 2013, the European Commission ('the Commission') imposed, by means of Regulation (EU) No 418/2013[(2)] ('the provisional Regulation'), a provisional anti-dumping duty on imports into the European Union ('the Union') of certain stainless steel wires originating in India ('the country concerned').

(2) The investigation was initiated following a complaint lodged on 28 June 2012 by the European Confederation of Iron and Steel Industries (Eurofer) ('the complainant') on behalf of Union producers representing more than 50 % of the total Union production of certain stainless steel wires.

(3) In the parallel anti-subsidy investigation, the Commission imposed a provisional countervailing duty on imports of certain stainless steel wires originating in the country concerned by means of Regulation (EU) No 419/2013[(3)] and a definitive countervailing duty by means of Regulation (EU) No 861/2013[(4)].

2. **Parties concerned by the investigation**

(4) At the provisional stage of the investigation, sampling was applied for the Indian exporting producers and the Union producers. At the provisional stage, sampling was envisaged also regarding unrelated importers. However, as two out of three importers chosen for the sample did not submit questionnaire replies, sampling for importers could not be applied. Therefore, all available information pertaining to all

cooperating importers was used to reach definitive findings; in particular as far the Union interest is concerned.

(5) One exporting producer alleged that since no sales from non-complainants were used for the determination of the injury suffered by the Union industry, the selected sample of Union producers could not be considered representative. That claim was rejected because the sample was selected on the basis of the replies received from all cooperating Union producers regardless their support for the complaint at the stage of determination of standing, and was made on the basis of production volumes.

(6) One exporting producer, related to a Union producer, opposed the complaint, and requested individual examination, because it was not included in the sample of exporting producers, as a result of its low export volumes. The Union producer itself was also not included in the Union industry sample because of its low production volumes. The individual examination was granted by the Commission, but the exporting producer withdrew its request.

(7) Seven Indian exporting producers outside the sample requested individual examination. Two of them replied to the questionnaires and five did not. Out of the two which replied to the questionnaire, one withdrew its individual examination request. As a result, the Commission has examined the request of one Indian exporting producer outside the sample, namely:

— KEI Industries Limited, New Delhi (KEI).

(8) At the provisional stage, none of the initially sampled exporting producers was found to have submitted sufficiently reliable information. Therefore Article 18 of the basic Regulation was applied. The Commission decided to extend the sample with three companies, based on their export volumes and their willingness to cooperate, as expressed following the initiation of the proceeding. As a result, the Commission has examined the questionnaire replies and carried out verification visits at the premises of the following Indian exporting producers:

— Garg Inox, Bahadurgarh, Haryana

— Macro Bars and Wires, Mumbai, Maharashtra

— Nevatia Steel & Alloys, Mumbai, Maharashtra

(9) Apart from the above, recitals 4 to 7 and 14 of the provisional Regulation are confirmed.

3. Investigation period and the period considered

(10) As set out in recital 20 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 April 2011 to 31 March 2012 (‘investigation period’ or ‘IP’). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2009 to 31 March 2012 (‘period considered’).

4. Subsequent procedure

(11) Following the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures ('provisional disclosure'), several interested parties, namely the 3 sampled exporting producers, the one exporting producer which withdrew its individual examination request, the complainant, and 11 users submitted comments. The parties who so requested were granted a hearing. The Commission continued to seek information which it deemed necessary for the definitive findings. All comments received were considered and taken into account, where appropriate.

(12) The Commission informed the interested parties of the essential facts and considerations on the basis of which it intended to recommend the imposition of definitive anti-dumping duty on imports of certain stainless steel wires originating in the country concerned and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). The parties were also granted a period within which they could comment on the final disclosure. All comments received were considered and taken into account, where appropriate.

(13) Following the comments received on the final disclosure, the Commission informed the interested parties of changes in the findings concerning the level of dumping of certain exporting producers. The parties were again granted a period within which they could comment on the additional disclosure. All comments received were considered and taken into account, where appropriate. One interested party, the complainant, criticised the fact that the findings concerning the level of dumping of certain exporting producers were altered on the basis of new data and comments received after the provisional disclosure and at the definitive stage of the investigation. It also alleged that its procedural rights were infringed.

(14) The Commission, however, considered that it was to take into account the submissions received from the interested parties and, if necessary, alter the findings when the comments were justified. In none of these instances, new unverified data was used for the dumping determination. Moreover, the procedural rights of all interested parties were respected as they were duly and timely informed and given the same deadlines within which to submit comments.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(15) As stated in recital 21 of the provisional Regulation, the product concerned is defined as stainless steel wires containing by weight:

— 2,5 % or more of nickel, other than wire containing by weight 28 % or more but not more than 31 % of nickel and 20 % or more but not more than 22 % of chromium,

— less than 2,5 % of nickel, other than wire containing by weight 13 % or more but not more than 25 % of chromium and 3,5 % or more but not more than 6 % of aluminium,

currently falling within CN codes 7223 00 19 and 7223 00 99, originating in the country concerned.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 1106/2013. (See end of Document for details)*

(16) Some users expressed concerns about the apparent lack of distinction between the various types of the product concerned and the like product because a wide product mix exists among all the product types. There was a particular concern as to how a fair comparison among all types could be ensured in the investigation. As is the case in most investigations, the definition of the product concerned covers a wide variety of product types which share the same or similar basic physical, technical and chemical characteristics. The fact that these characteristics can vary from product type to product type may indeed lead to cover a wide range of types. This is the case in the current investigation. The Commission took account of the differences among the product types and ensured a fair comparison. A unique product control number (PCN) was allocated to each product type, produced and sold by the Indian exporting producers and to each one produced and sold by the Union industry. The number depended on the main characteristics of the product — in this case: the steel grade, the tensile strength, the coating, the surface, diameter, and shape. Therefore, the types of wires exported to the Union were compared on a PCN basis with the products produced and sold by the Union industry that have the same or similar characteristics. All these types fell within the definition of the product concerned and the like product in the notice of initiation[(5)] and in the provisional Regulation.

(17) One party reiterated its claim that the so-called 'highly technical' product types are different and not interchangeable with other types of the product concerned. Hence, they should be excluded from the product definition. According to the case-law of the Court of Justice of the European Union[(6)], when determining whether products are alike so that they form part of the same product, an assessment as to whether they share the same technical and physical characteristics, and have the same basic end-uses and the same price-quality ratio, has to be carried out. In that regard, the interchangeability of, and competition between, those products should also be assessed. The investigation found that the 'highly technical' product types referred to by the party have the basic physical, chemical, and technical characteristics as the other products subject to the investigation. They are made from stainless steel and they are wires, and the production process is similar, using similar machines, such that producers can switch between different variants of the product according to demand. Therefore, although different types of wires are not directly interchangeable and do not directly compete, producers are competing for contracts covering a broad range of stainless steel wires. Moreover, these product types are produced and sold by both the Union industry and the Indian exporting producers using a similar production method. Therefore, the claim cannot be accepted.

(18) In response to final disclosure, one party claimed that the analysis carried out by the Commission in terms of establishing whether the so-called highly technical product types should be included in the investigation was insufficient. This argument is rejected. The investigation established that the highly technical product types fall within the product definition as stated in recital 17. The party wrongly assumes that all the criteria referred to in the case-law have to be met at the same time.. According to the case-law of the Court of Justice of the European Union[(7)], the Commission enjoys a

wide discretion when defining the product scope, and has to base this assessment on the set of criteria developed by the Court. Often, as in the present case, some criteria may point in one and some in the other direction; in such a situation, the Commission needs to carry out a global assessment, as it has done in the present case. It is therefore wrongly assumed by this interested party that product types need to share all characteristics in order to fall in the same product definition.

(19) Some users claimed that the so-called stainless steel 'series 200' wires should be excluded from the product scope. In particular, they alleged this type was hardly produced by the Union industry. However, this claim is unfounded. First, the fact that a certain product type is not produced by the Union industry is not a sufficient reason to exclude it from the scope of the investigation, where the production process is such that Union producers could start producing the product type in question. Second, as for highly technical wires, it was found that these types of the product concerned have basic physical, chemical, and technical characteristics identical or similar to other types of the like product produced and sold by the Union industry. Therefore, the claim cannot be accepted.

(20) Alternatively, they claimed that wire rod should be included in the definition of the product concerned. However, wire rod is the raw material used for the production of the product concerned but can also be used for the production of different products such as fasteners and nails. Therefore, contrary to the product concerned, it does not constitute a finished steel product. Through the cold forming production process, the wire rod, amongst other products, can be transformed into the product concerned or the like product. On that basis, wire rod cannot be included in the product scope within the meaning of the basic Regulation.

(21) On the basis of the above, the definition of the product concerned and the like product in recitals 21 to 24 of the provisional Regulation are hereby confirmed.

C. DUMPING

1. Introduction

(22) During the verification visits at the premises of the three originally sampled Indian exporting producers and the subsequent analysis of the collected information, it was found that these companies had submitted some information which could not be considered reliable. The Commission continued its investigation, analysing all information submitted in reaction to the provisional disclosure and in subsequent hearings.

(23) As indicated in recital 26 of the provisional Regulation, in the case of one exporting producer, the Commission had found that the costs reported in the questionnaire reply could not be reconciled with the company's internal cost reporting system. The company had argued that the lack of reconciliation was caused by registration errors and a valuation method of stocks that differed between the internal cost reporting system and the data published in the annual accounts.