Commission Regulation (EU) No 115/2012 of 9 February 2012 imposing a provisional countervailing duty on imports of certain stainless steel fasteners and parts thereof originating in India

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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 Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 13 May 2011, the Commission announced, by a notice published in the *Official Journal of the European Union*[(2)] ('notice of initiation'), the initiation of an anti-subsidy proceeding ('AS proceeding') with regard to imports into the Union of certain stainless steel fasteners and parts thereof originating in India ('India' or 'the country concerned').

(2) On the same day, the Commission announced by a notice published in the *Official Journal of the European Union*[(3)] ('notice of initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Union of certain stainless steel fasteners and parts thereof originating in India and commenced a separate investigation ('AD proceeding').

(3) The AS proceeding was initiated following a complaint lodged on 31 March 2011 by the European Industrial Fasteners Institute (EIFI) ('the complainant') on behalf of producers representing more than 25 % of total Union production of certain stainless steel fasteners and parts thereof. The complaint contained prima facie evidence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an investigation.

(4) Prior to the initiation of the proceeding and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Government of India (the 'GOI') that it had received a properly documented complaint alleging that subsidised imports of certain stainless steel fasteners and parts thereof originating in India were causing

material injury to the Union industry. The GOI was invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. No mutually agreed solution was found.

1.2. **Parties concerned by the proceeding**

(5) The Commission officially advised the complainant Union producers, other known Union producers, the exporting producers, importers, users known to be concerned, and the Indian authorities of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(6) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

1.2.1. *Sampling for exporting producers in India*

(7) In view of the large number of exporting producers in India, sampling was envisaged in the notice of initiation for the determination of subsidisation in accordance with Article 27 of the basic Regulation.

(8) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers in India were requested to make themselves known within 15 days from the date of the initiation of the investigation and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies involved in the production and/or selling of the product concerned during the period from 1 April 2010 to 31 March 2011.

(9) The relevant Indian authorities were also consulted for the selection of a representative sample.

(10) In total, five exporting producers, including a group of related companies in India, provided the requested information and agreed to be included in the sample within the deadline set in the notice of initiation. These cooperating companies reported exports of the product concerned to the Union during the investigation period. The comparison between Eurostat import data and the volume of exports to the Union of the product concerned reported for the investigation period by the five cooperating companies revealed that the cooperation of Indian exporting producers was close to 100 %. Thus, the sample was chosen on the basis of the information submitted by these five exporting producers.

1.2.2. *Selection of the sample of cooperating companies in India*

(11) In accordance with Article 27 of the basic Regulation, the Commission selected a sample based on the largest representative volume of exports of the product concerned to the Union which could reasonably be investigated within the time available. The sample selected consisted of three individual companies, together

representing ca. 98 % of the total volume of exports from India to the Union of the product concerned.

(12) In accordance with Article 27(2) of the basic Regulation, the parties concerned and the Indian authorities were consulted on the selection of the sample. The two non-sampled exporting producers insisted to be also included in the sample. However, in view of the representativity of the proposed sample, as mentioned in recital (11) above, it was concluded that it was not necessary to amend or enlarge the sample.

1.2.3. *Individual examination of companies not selected in the sample*

(13) A claim for individual examination as per Article 27(3) of the basic Regulation was received from a non-sampled exporting producer. The examination of this claim at the provisional stage would have been too burdensome to be carried out. Therefore, a decision whether individual examination will be granted to this company will be taken at a later stage.

1.2.4. *Sampling of Union producers*

(14) In view of the apparent large number of Union producers, sampling was provided for in the notice of initiation for the determination of injury, in accordance with Article 27 of the basic Regulation.

(15) In the notice of initiation the Commission announced that it had provisionally selected a sample of Union producers. This sample consisted of five companies, out of the 15 Union producers that were known prior to the initiation of the investigation, selected on the basis of their sales volume, size and geographic location in the Union. They represented 37 % of the total estimated Union production during the IP. Interested parties were invited to consult the file and to comment on the appropriateness of this choice within 15 days of the date of publication of the notice of initiation. No interested party opposed to the proposed sample composed of five companies.

(16) Subsequently one of the five sampled Union producers withdrew its cooperation. The remaining four sampled companies still represented 32 % of the total estimated Union production during the IP. Hence the sample was still considered to be representative of the Union industry. Verification visits took place at the premises of three of these companies. It was considered at this provisional stage of the investigation that a thorough desk analysis was sufficient to verify the data provided by the fourth sampled company.

1.2.5. *Sampling of unrelated importers*

(17) In view of the potentially large number of importers involved in the proceeding, sampling was envisaged for importers in the notice of initiation in accordance with Article 27 of the basic Regulation. Two importers provided the requested information and agreed to be included in the sample within the deadline set in the notice of initiation. Given the low number of importers who made themselves known, it was decided not to apply sampling.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 115/2012. (See end of Document for details)*

1.2.6. *Questionnaire replies and verifications*

(18) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Questionnaires were thus sent to the GOI, the sampled exporting producers in India, the sampled Union producers, the cooperating importers in the Union and to all users known to be concerned by the investigation.

(19) Replies were received from the GOI, the sampled exporting producers and four sampled Union producers. None of the importers or users contacted replied to the questionnaire.

(20) The Commission sought and verified all the information provided by interested parties and deemed necessary for a provisional determination of subsidisation, resulting injury and Union interest. Verification visits were carried out at the premises of the GOI in Delhi and the following parties:

Producers in the Union

— Inox Viti di Cattinori Bruno & C.s.n.c., Grumello del Monte, Italy,

— Bontempi Vibo S.p.A., Rodengo Saiano, Italy,

— Ugivis S.A., Belley, France;

Exporting producers in India

— Viraj Profiles Limited, Boisar, Dist. Thane, Maharashtra,

— Agarwal Fastners Pvt. Ltd., Vasai (East), Dist. Thane, Maharashtra,

— Raajratna Ventures Ltd., Ahmedabad, Gujarat.

1.3. **Investigation period**

(21) The investigation of subsidisation and injury covered the period from 1 April 2010 to 31 March 2011 (‘investigation period’ or ‘IP’). The examination of trends relevant for the assessment of injury covered the period from 2008 to the end of the investigation period (‘period considered’).

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(22) The product concerned is stainless steel fasteners and parts thereof (‘SSF’) originating in India, currently falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61. and 7318 15 70.

2.2. **Like product**

(23) The product concerned and the product produced and sold on the domestic market of India as well as the product produced and sold on the Union market by the Union industry were found to have the same basic physical, chemical and technical characteristics as well as the same basic uses. They are therefore provisionally considered to be alike within the meaning of Article 2(c) of the basic Regulation.

3. SUBSIDISATION

3.1. Introduction

(24) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

(a) Duty Entitlement Passbook Scheme;

(b) Advance Authorisation Scheme;

(c) Export Promotion Capital Goods Scheme;

(d) Export Oriented Units Scheme;

(e) Focus Product Scheme;

(f) Export Credit Scheme;

(g) Electricity Duty Exemption.

(25) The schemes (a) to (e) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992), which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. The Foreign Trade Policy document relevant to the IP of this investigation is the FT-policy 09-14. In addition, the GOI also sets out the procedures governing the FT-policy 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 09-14'). The Handbook of Procedures is also updated on a regular basis.

(26) The Export Credit Scheme specified above under (f) is based on sections 21 and 35A of the Banking Regulation Act 1949, which allow the Reserve Bank of India ('RBI') to direct commercial banks in the field of export credits.

(27) The Electricity Duty Exemption specified above under (g) is included in the Package Scheme of Incentives 2007 of the Government of Maharashtra, Resolution No. PSI-1707/(CR-50)/IND-8, dated 30 March 2007.

3.2. Duty Entitlement Passbook Scheme ('DEPBS')

(a) Legal Basis

(28) The detailed description of the DEPBS is contained in chapter 4.3 of the FT-policy 09-14 as well as in chapter 4 of the HOP I 09-14.

(b) Eligibility

(29) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) Practical implementation of the DEPBS