Council Implementing Regulation (EU) No 405/2011 of 19 April 2011 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain stainless steel bars and rods originating in India

COUNCIL IMPLEMENTING REGULATION (EU) No 405/2011

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imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain stainless steel bars and rods 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 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 15(1) thereof,

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

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission, by Regulation (EU) No 1261/2010[(2)] (the provisional Regulation) imposed a provisional countervailing duty on imports of certain stainless steel bars originating in India.

(2) The proceeding was initiated following a complaint lodged on 15 February 2010 by the European Federation of Iron and Steel Industries (Eurofer) (the complainant) on behalf of producers representing a major proportion, in this case more than 25 %, of total Union production of certain stainless steel bars.

(3) As set out in recital 23 of the provisional regulation, the investigation of subsidisation and injury covered the period from 1 April 2009 to 31 March 2010 (‘investigation period’ or ‘IP’). The examination of the trends relevant for the assessment of injury covered the period from 2007 to the end of the investigation period (period considered).

1.2. Subsequent procedure

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional countervailing measures (provisional disclosure), several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted the opportunity to be heard. The Commission continued to seek information it

deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and taken into account, where appropriate.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty on imports of certain stainless steel bars originating in India and the definitive collection of the amounts secured by way of the provisional duty. The parties were also granted a period within which they could make representations subsequent to this final disclosure.

1.3. **Parties concerned by the proceeding**

(6) In the absence of any comments concerning the parties concerned by the proceeding, recitals 5 to 22 of the provisional Regulation are hereby confirmed.

2. PRODUCT CONCERNED AND THE LIKE PRODUCT

2.1. **Product concerned**

(7) It is recalled that, as stated in recital 24 of the provisional Regulation, 'the product concerned' was defined as stainless steel bars and rods, not further worked than cold-formed or cold-finished, other than bars and rods of circular cross-section of a diameter of 80 mm or more, originating in India currently falling within CN codes 7222 20 21, 7222 20 29, 7222 20 31, 7222 20 39, 7222 20 81 and 7222 20 89.

(8) One exporting producer in India claimed that SSB of a circular cross section of a diameter of less than 80 mm but outside the tolerance range of H6 to H11 should be excluded from the investigation because it does not fall within the product scope.

(9) This argument was rejected since the product scope does not refer to tolerances. The product control number (PCN) in the questionnaire does contain a field for tolerances limited to range H6 to H11 but this is only for comparison purposes and has no binding consequences for the product under investigation. It is therefore concluded that products outside the tolerance range of H6 to H11 should not be excluded.

(10) It should be noted that for the calculation of the provisional subsidy and injury margins, the products outside the tolerance range of H6 to H11 were taken into account.

2.2. **Like product**

(11) In the absence of any comments concerning the like product, recital 25 of the provision Regulation is hereby confirmed.

3. SUBSIDISATION

3.1. **Introduction**

(12) In recital 26 of the provisional Regulation, reference was made to the following schemes, which allegedly involve the granting of subsidies:

(a) duty entitlement passbook scheme;

(b) advance authorisation scheme;

(c) export promotion capital goods scheme;

(d) export oriented units scheme;

(e) export credit scheme.

(13) The Union industry questioned whether the Commission failed to take into account a number of subsidy schemes, and as a result believed that the subsidies found to be received by Indian producers were underestimated.

(14) In reply to this, it should be noted that the complaint contained a great number of national and local subsidy schemes, which were included in the questionnaire to exporting producers in India and investigated by the Commission. However, only for the schemes listed in recital 12 above, it was found that the investigated exporting producers in the sample had received subsidies.

(15) The Union industry also argued that the Commission findings contradict a US Department of Commence (US DOC) finding in a recent countervailing proceedings concerning certain steel exports from India where much higher subsidies were found. However, it should be noted that this finding relates to a different product and cover a different investigation period. Consequently, this argument is hereby rejected.

(16) In the absence of any other comments, recitals 26 to 28 of the provisional Regulation are hereby confirmed.

3.2. **Duty entitlement passbook scheme (DEPBS)**

(17) Several parties argued that the DEPBS should not be considered as a countervailable subsidy, since the purpose of the scheme is to offset customs duties on imports. As explained in recital 38 of the provisional Regulation this scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation since it does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. In particular, an exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I, and Annexes II and III to the basic Regulation. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DEPBS. Therefore, these arguments are hereby rejected.

(18) In case of sales of the DEPB licence, one party argued that the actual selling price was below the licence value and therefore the benefit was less. In this regard, it should be noted that the benefit under this scheme was calculated on the basis of the amount of credit granted in the licence regardless of whether the licence was used to offset customs duties on imports or whether the licence was actually sold. It is considered that any sale of a licence at a price less the face value is a pure commercial decision which does not alter the amount of benefit received under this scheme. Therefore, this argument is hereby rejected.

(19) One party further argued that even if the DEPBS was considered countervailable, the benefit received under the scheme should not be based on export value, but rather the actual use of the DEPB licence. In this respect, it should be recalled that in accordance with Articles 3(2) and 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of benefit conferred on the recipient, which is found to exist during the IP. In this regard, it was considered that the benefit is conferred on the recipient at the point of time when an export transaction is made under this scheme. At that moment, the Government of India (GOI) is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 3(1)(a)(i) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. By virtue of the fact that a company is aware that it will receive a subsidy under DEPBS, the company is in a more advantageous position, because it can reflect the subsidies through offering lower prices. The moment of export is decisive in order to establish conferral of a benefit, not the subsequent usage, because an exporter already with such vested right is 'better off' in financial terms. Consequently, this claim is hereby rejected.

(20) In the absence of any other comments concerning this scheme, recitals 29 to 41 of the provisional Regulation are hereby confirmed.

3.3. **Advance authorisation scheme (AAS)**

(21) One party argued that the AAS should be considered as a duty drawback system, because the imported materials are used to produce exported goods. In reply to this argument, it was explained in recital 54 of the provisional Regulation that the sub-scheme used in the present case cannot be considered permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. The GOI did not effectively apply a verification system or a procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) to the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) to the basic Regulation). It is also considered that the standard input-output norms (SIONs) for the product concerned were not sufficiently precise and that themselves cannot constitute a verification system of actual consumption because the design of

those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation). The sub-scheme is therefore countervailable, and the argument is hereby rejected.

(22) Regarding the calculation of the subsidy amount, and contrary to the submission by one party, AAS benefit generated by other than the product concerned had to be considered when establishing the amount of countervailable benefit. No obligation exists under AAS which limits the use of the benefit to the importation of duty-free input material linked to a particular product. Consequently, the product concerned can benefit from all AAS benefit generated.

(23) In the absence of any other comments concerning this scheme, recitals 42 to 58 of the provisional Regulation are hereby confirmed

3.4. **Export promotion capital goods scheme (EPCGS)**

(24) In the absence of any comments concerning this scheme, recital 59 of the provisional Regulation is hereby confirmed.

3.5. **Export oriented units scheme (EOUS)**

(25) Before addressing a number of comments from the company in the sample which had the status of an EOU, it should be recalled that a crucial obligation of an EOU as set out in the FT-policy 2004-2009 and FT-policy 2009-2014 is to achieve net foreign exchange (NFE) earnings, that is in a reference period (5 years) the total value of exports has to be higher than the total value of imported goods. All enterprises which, in principle, undertake to export their entire production of goods or services may be set up under the EOUS.

(26) In return, export oriented units are entitled to a number of concessions listed under recital 66 of the provisional Regulation. They are contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation. The export objective of an EOU as set out in Chapter 6.1 of the FT-policy 2009-2014 is a *conditio sine qua non* to obtain the subsidies.

(27) The exemptions an EOU enjoys are all contingent in law upon export performance. The EOUS cannot be considered as a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I (items (H) and (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation.

(28) In addition, it has not been confirmed that the GOI has a verification system or procedure in place to confirm whether and in what amounts duty and or sales tax free procured inputs were consumed in the production of the exported product (Annex