Commission Regulation (EU) No 1261/2010 of 22 December 2010 imposing a provisional countervailing duty on imports of certain stainless steel bars 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 1 April 2010, 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 bars 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 bars originating in India and commenced a separate investigation (AD proceeding).

(3) The AS 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. 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 bars originating in India were causing material injury to the Union industry. The GOI was invited for consultations with the aim of clarifying the situation

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as regards the contents of the complaint and arriving at a mutually agreed solution. In this case, 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 subsidization 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 2009 to 31 March 2010.

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

(10) In total, 22 exporting producers, including groups 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. 20 of these cooperating companies or groups reported exports of the product concerned to the Union during the investigation period. Thus, the sample was chosen on the basis of the information submitted by these 20 exporting producers or groups of exporting producers.

(11) Any exporting producers which did not make themselves known within the aforesaid deadline or did not provide the requested information in due time, were considered as non-cooperating with the investigation. 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 20 cooperating companies or groups with exports of the product concerned to the Union during the investigation period suggests that the cooperation of Indian exporting producers was very high.

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

(12) 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 two individual companies and one group of companies consisting of four related companies, together representing more than 63 % of the total volume of exports to the Union of the product concerned.

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

(13) One exporting producer which was not included in the sample because it did not meet the criteria set in Article 27(1) of the basic Regulation requested that an individual margin of subsidisation be established pursuant to Article 27(3) of the basic Regulation and provided a reply to the questionnaire.

(14) As mentioned in recital 12 the sample was limited to a reasonable number of companies which could be investigated within the time available. The companies investigated for the purpose of the investigation of subsidisation are listed in recital 22 below. In view of the number of verification visits to be carried out at the premises of these companies, it was considered that the individual examination would be unduly burdensome and would have prevented the timely completion of the investigation.

(15) Therefore, it was provisionally concluded that the request for an individual examination could not be accepted.

1.2.4. *Sampling of Union producers*

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

(17) No other producers than the eight complainants made themselves known and provided, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period. Out of these eight, a sample of four companies was selected on basis of the representativeness of their sales volume, their various product types and their location in the Union. The complainant and the producers concerned were consulted on the selection of the sample.

(18) The four sampled Union producers accounted for 62 % of the total production of the Union industry during the investigation period.

1.2.5. *Sampling of importers*

(19) In view of the large number of importers identified in the complaint, sampling was envisaged for importers in the notice of initiation in accordance with Article 27 of the basic Regulation. Four 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.

(20) 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

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producers in India, the sampled Union producers, to the four importers in the Union that came forward within the sampling exercise and to all users known to be concerned by the investigation.

(21) Replies were received from the GOI, the sampled exporting producers, the exporting producer which requested individual examination, the sampled producers in the Union and from one importer. No questionnaire replies were received from users or from any other interested party in the proceeding. In addition, a major proportion of Union producers provided the requested general data for the injury analysis.

(22) 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 GOI in Delhi, the Government of Maharashtra in Mumbai, the regional office of the GOI in Mumbai, and the following parties:

Producers in the Union

— Aceros Inoxidables Olarra SA, Spain and related sales companies,

— Rodaciai SPA, Italy and related sales companies,

— Roldan SA, Spain and related sales companies,

— Ugitech France SA, France and related sales companies.

Exporting producers in India

— Viraj Profiles Vpl. Ltd, Thane, Maharashtra,

— Chandan Steel Ltd, Mumbai, Maharashtra.

Venus group:

— Venus Wire Industries Pvt. Ltd, Mumbai, Maharashtra,

— Precision Metals, Mumbai, Maharashtra,

— Hindustan Inox Ltd, Mumbai, Maharashtra,

— Sieves Manufacturer India Pvt. Ltd, Mumbai, Maharashtra.

1.3. Investigation period

(23) The investigation of subsidisation and injury covered the period from 1 April 2009 to 31 March 2010 (‘investigation period’ or ‘IP’). The examination of trends relevant for the assessment of injury covered the period from 2007 to the end of the investigation period (period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(24) The product concerned is 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 (the product concerned) currently falling within CN codes 7222 20 21, 7222 20 29, 7222 20 31, 7222 20 39, 7222 20 81 and 7222 20 89.

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2.2. **Like product**

(25) The investigation showed that the products produced and sold on the domestic market of India, which are covered by this investigation, have the same basic physical, chemical and technical characteristics and uses as those exported from this country to the Union market. Similarly, the products produced by the Union industry and sold on the Union market have the same basic physical, chemical and technical characteristics and uses when compared to those exported to the Union from the country concerned. They are therefore provisionally considered to be alike within the meaning of Article 2(c) of the basic Regulation.

3. **SUBSIDISATION**

3.1. **Introduction**

(26) 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) Export Credit Scheme.

(27) The schemes (a) to (d) 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 5 years and updated regularly. Two Foreign Trade Policy documents are relevant to the IP of this investigation, i.e. FT-policy 04-09 and FT-policy 09-14. – In addition, the GOI also sets out the procedures governing the FT-policy 04-09 and FT-policy 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 04-09' and 'HOP I 09-14' respectively). The Handbook of Procedures is also updated on a regular basis.

(28) The Export Credit Scheme specified above under (e) 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.

3.2. **Duty Entitlement Passbook Scheme (DEPBS)**

(a) *Legal Basis*

(29) The detailed description of the DEPBS is contained in chapter 4.3 of the FT-policy 04-09 and FT-policy 09-14 as well as in chapter 4 of the HOP I 04-09 and of the HOP I 09-14.