

COMMISSION IMPLEMENTING DECISION

of 21.6.2017

concerning an application for refund of anti-dumping duties paid on imports of certain stainless steel wires originating in India (only the German text is authentic)

"The Decision has been expunged of data pursuant to Article 4(2) of Regulation (EC) 1049/2001. The information withheld under Article 4(2) first indent concerns the identity of the undertaking that is the addressee of the Commission Decision and other commercially sensitive details. The disclosure of this information could confer an undue advantage to its competitors which could exploit this information to the detriment of the undertaking concerned, thereby undermining its commercial interests."

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ('the basic Regulation')¹, and in particular Article 11(8) thereof,

After informing the Member States,

Whereas:

A. PROCEDURE

- (1) By Implementing Regulation (EU) No 1106/2013², the Council imposed a definitive anti-dumping duty on imports of certain stainless steel wires originating in India, ('the anti-dumping measures in force'). The rates of the anti-dumping duty for individual Indian exporting producers were set in the range between 0% and 12,5% and the rate of the anti-dumping duty for all other companies was set at 12,5%.
- (2) By Implementing Regulation (EU) No 861/2013³, the Council imposed a definitive countervailing duty on imports of certain stainless steel wires originating in India. The rates of the countervailing duty for individual Indian exporting producers were set in the range between 0% and 3,7% and the rate of the countervailing duty for all other companies was set at 3,7%.

¹ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8.6.2016 (OJ L 176, 30.6.2016, p. 21) repealing Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

² 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 (OJ L 298, 8.11.2013, p. 1).

³ Council Implementing Regulation (EU) No 861/2013 of 2.9.2013 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India (OJ L 240, 7.9.2013, p. 1).

- (3) By Implementing Regulation (EU) 2015/1483⁴, the European Commission ('the Commission') amended the above measures following an absorption reinvestigation pursuant to Article 12 of the basic Regulation. The rates of the anti-dumping duty for individual Indian exporting producers were adjusted in the range between 0% and 12,5% and the rate of the anti-dumping duty for all other companies was kept at 12,5%.
- (4) By Implementing Regulation (EU) 2017/220⁵, the Commission amended the above measures following an interim review request lodged *inter alia* by Venus group⁶, a group of related exporting producers of the product concerned from India, pursuant to Article 11(3) of the basic Regulation. The individual rate of the anti-dumping duty for Venus group was set at 6,9%.

Refund application

- (5) On 6 May 2014, "[omissis]", ('the applicant'), a German importer, submitted via the German Authority an application for a refund of anti-dumping duties pursuant to Article 11(8) of the basic Regulation. The application related to duties paid on an import of certain stainless steel wires originating in India and subject to the duty rate of 8,6% for the anti-dumping measures in force until 3 September 2015.
- (6) The total amount of anti-dumping duties for which a refund is claimed is EUR "[omissis]". The anti-dumping duties were levied by the customs authorities on 15 July 2013. The transaction, for which a refund was claimed, was invoiced on 24 June 2013 by "[omissis]" ('the exporting producer'). The exporting producer and the applicant belong to "[omissis]"⁷.

⁴ Commission Implementing Regulation (EU) 2015/1483 of 1.9.2015 amending Council Implementing Regulation (EU) No 1106/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India following and absorption reinvestigation pursuant to Article 12 of Council Regulation (EC) No 1225/2009 (OJ L 228, 2.9.2015, p. 1).

⁵ Commission Implementing Regulation (EU) 2017/220 of 8 February 2017 amending Council Implementing Regulation (EU) No 1106/2013 imposing a definitive anti-dumping duty on imports of certain stainless steel wires originating in India following a partial interim review under Article 11(3) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L34, 9.2.2017, p. 21).

⁶ Venus group includes the companies Venus Wire Industries Pvt. Ltd., Precision Metals, Hindustan Inox Ltd., Sieves Manufacturer India Pvt. Ltd., and related importer Venus Edelstahl GmbH.

⁷ In accordance with Article 127 of Commission Implementing Regulation (EU) 2015/2447 of 24.11.2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, two persons shall be deemed to be related if one of the following conditions is fulfilled: (a) they are officers or directors of the other person's businesses; (b) they are legally recognized partners in business; (c) they are employer and employee; (d) a third party directly or indirectly owns or controls or holds 5% or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they control a third person directly or indirectly; (h) they are members of the same family.

Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related only if they fall within the criteria referred to in the previous paragraph.

For the purposes of letter (e), (f) and (g) of the first paragraph, one person is deemed to control another when the former is legally or operationally in a position to exercise direction over the latter. (OJ L 343, 29.12.2015, p. 558). In this context 'person' means any natural or legal person.

Refund investigation period

- (7) The investigation of the dumping margin of the exporting producer was set to cover the period from 1 April 2013 to 30 September 2014 ('refund investigation period' or 'RIP').

B. ARGUMENTS OF THE APPLICANT

- (8) The applicant claimed that its dumping margin, on the basis of which anti-dumping duties were paid, was eliminated or reduced below the level of the duty in force at the time and therefore requested the anti-dumping duties paid to be reimbursed.

C. ADMISSIBILITY

- (9) The application relating to the requests referred to in recital (5) was submitted within the time limits, contained sufficient evidence and precise information on the amount of refund of anti-dumping duties claimed. Therefore, the application was admissible under Article 11(8) of the basic Regulation.
- (10) The application was considered to have been duly supported by evidence as of 22 July 2016, the date on which full evidence on export prices and normal values was submitted.

D. MERITS OF THE APPLICATION

General

- (11) The Commission sought and verified all the information deemed necessary to determine the exporting producer's dumping margin. Verification visits were carried out at the premises of the following companies:
- "[omissis]";
 - "[omissis]".

Normal value

- (12) In accordance with Article 2(2) of the basic Regulation, it was examined whether the total domestic sales volume of stainless steel wires of the exporting producer to independent customers were representative during the RIP, i.e. if the total volume of such sales represented 5% or more of its export sales volume of stainless steel wires to the Union. On that basis, the domestic sales of the exporting producer were considered to be overall representative.
- (13) The Commission subsequently identified those product types sold domestically that were identical or comparable with the types sold for export to the Union.
- (14) The Commission then examined whether the domestic sales by the exporting producer on the domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the RIP represents at least 5% of the total volume of export sales of the identical or comparable product type to the Union.
- (15) With regard to the exporting producer only some product types were representative. For the product types that were not representative, the Commission proceeded as set out under recital (18).

- (16) The Commission subsequently examined the proportion of profitable sales to independent customers on the domestic market for each product type during the RIP in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (17) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if
- the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production represented more than 80% of the total sales volume of this product type; and
 - the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (18) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the RIP.
- (19) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the RIP, if:
- the volume of profitable sales of the product type represents 80% or less of the total sales volume of this type; or
 - the weighted average price of this product type is below the unit cost of production.
- (20) As the result of the above tests, the normal value for the exporting producer was calculated as a weighted average of their profitable sales, except where there were no or insufficient sales of a product type of the like product in the ordinary course of trade, or where a product type was not sold in representative quantities on the domestic market, where the Commission constructed the normal value in accordance with Article 2(3) and Article 2(6) of the basic Regulation.
- (21) Normal value was constructed by adding the following to the average cost of production of the like product of the applicant concerned during the RIP:
- the weighted average selling, general and administrative ('SG&A') expenses incurred by the applicant on domestic sales of the like product, in the ordinary course of trade, during the RIP; and
 - the weighted average profit realised by the applicant on domestic sales of the like product, in the ordinary course of trade, during the RIP.
- (22) The cost of production was adjusted, where necessary.

Export price

- (23) The exporting producer exported to the Union either directly to independent customers or through a related company acting as an importer.
- (24) Where the product concerned was directly exported to independent customers in the Union, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of export prices actually paid or payable.
- (25) Where export sales to the Union were made through the related company acting as an importer, the export price was established in accordance with Article 2(9) of the basic Regulation on the basis of prices at which the imported products were first resold to an independent buyer, adjusted for all costs, incurred between importation and resale, as well as a reasonable margin for SG&A and for profits. The related importer's own

SG&A costs were used and, due to unreliability of the related importer's profit margin and in the absence of profit information from an unrelated importer in this investigation, use was made of the profit rate applied in the original investigation, namely 5%.

Comparison

- (26) The normal value and export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, handling, loading and ancillary charges, import charges, credit costs, bank charges, and commissions.

Dumping margin

- (27) As provided for under Article 2(11) and Article 2(12) of the basic Regulation, for the RIP the weighted average normal value was compared with the weighted average export price of the product concerned. This comparison showed the existence of dumping for the RIP.
- (28) The dumping margin for the exporting producer, expressed as a percentage of the net, free-at-Union-frontier price, duty unpaid, was found to be 5,4% for the RIP.

E. REFUND CALCULATION

- (29) Following the refund investigation, the revised anti-dumping duty rate that would be applicable to imports of the product concerned manufactured by "[omissis]" amounts to 2,4% in the RIP (i.e. the dumping margin of 5,4% minus 3% countervailing duty).
- (30) For the transaction invoiced during the RIP, the exporting producer has been able to demonstrate that, as indicated in recital (25) above, the anti-dumping duty (2,4%) should have been lower than the level of the duty applied for the same period (8,6%). Accordingly, the application for a refund is accepted for an amount corresponding to the difference (i.e. 6,2%) between the duty actually paid and the duty which would result from the RIP. Therefore, the amount to be refunded for the RIP is EUR "[omissis]".

F. DISCLOSURE

- (31) On 27 October 2016 a disclosure of the essential facts and considerations on the basis of which it was intended to amend the duty rate applicable to the RIP was sent to the applicant. The comments of the applicant were analysed and included in Commission Implementing Regulation related to the partial interim review investigation mentioned in recital (4) above.
- (32) On 24 April 2017 a disclosure of the above findings on the basis of which it was intended to propose to adopt a Commission Decision granting a partial refund was sent to the applicant. The applicant did not make any comment.

G. CONCLUSION

- (33) On the basis of the findings of the present investigation, it is concluded that a comparison between the dumping margins established during the RIP and the anti-dumping duty in force shows that a refund should be granted for an amount of EUR "[omissis]", whilst the application should be rejected in respect of the remaining EUR "[omissis]".

(34) The applicant is hereby informed that he has the right under Article 263(4) of the Treaty of the Functioning of the European Union to bring an action before the Court of Justice within two months of the notification of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The refund application submitted by "[omissis]" in respect of anti-dumping duties paid on imports of stainless steel wires originating in India is partially granted in the amount of EUR "[omissis]".

Article 2

This Decision is addressed to "[omissis]", and to the Federal Republic of Germany.

Done at Brussels, 21.6.2017

*For the Commission
Cecilia MALMSTRÖM
Member of the Commission*