

## 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 and English texts are 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')<sup>1</sup>, and in particular Article 11(8) thereof,

After informing the Member States,

Whereas:

#### A. PROCEDURE

- (1) By Implementing Regulation (EU) No 1106/2013<sup>2</sup>, 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 861/2013<sup>3</sup>, 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%.

<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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) 2015/1483<sup>4</sup>, 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) 2017/220<sup>5</sup>, the Commission amended the above measures following an interim review request lodged *inter alia* by Venus group<sup>6</sup>, 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) Between 6 May 2014 and 29 January 2016, "[omissis]", ('the applicant'), an Indian importer, submitted via the German authorities 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 imports 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 and of 9,4% for the anti-dumping measures in force from 4 September 2015 until 8 February 2017.
- (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 between 28 June 2013 and 26 October 2015. The transactions, for which a refund was claimed, were invoiced on Delivered Duty Paid commercial term by the same company "[omissis]" but in its capacity of an exporting producer ('the exporting producer') between 23 May 2013 and 24 September 2015.

### **Refund investigation periods**

- (7) Given that the refund application was recurrent and on-going and in compliance with point 3.6 of the Commission Notice (2014/C 164/09) concerning the reimbursement of anti-dumping duties ('the Commission Notice')<sup>7</sup>, the Commission established separate refund investigation periods ('refund investigation period' or 'RIP') within which to calculate new dumping margins. Therefore, the following two RIPs were used: from 1 April 2013 to 30 September 2014 ('first refund investigation period' or 'RIP1') and from 1 October 2014 to 30 September 2015 ('second refund investigation period' or 'RIP2').
- (8) Following a request made by the exporting producer, on 11 December 2015 the Commission initiated a partial interim review under Article 11(3) of the basic

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<sup>4</sup> 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).

<sup>5</sup> 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 L 34, 9.2.2017, p. 21).

<sup>6</sup> 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.

<sup>7</sup> OJ C 164, 29.5.2014, p. 9.

Regulation limited in scope to the examination of dumping as far as that exporting producer is concerned ('the review investigation'). The Commission published a notice of initiation in the *Official Journal of the European Union*<sup>8</sup>. The investigation period of the interim review was from 1 October 2014 to 30 September 2015 and the review was concluded on 8 February 2017.

- (9) In accordance with point 4.1.(c) of the Commission Notice, the Commission applied the findings of the review investigation to RIP2 since the transactions for which a refund is sought fall within the review investigation period.

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<sup>8</sup> OJ C 411, 11.12.2015, p. 4.

## **B. ARGUMENTS OF THE APPLICANT**

- (10) 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**

- (11) The application relating to the requests referred to in recital (5) above is admissible. It was introduced in conformity with the relevant provisions of the basic Regulation, notably in respect of time limits and evidence provided, and contained precise information on the amount of refund of anti-dumping duties claimed.
- (12) However, one transaction submitted for refund did not meet the condition established by Article 11(8) of basic Regulation and was rejected as inadmissible. In particular, according to the documents provided and as confirmed by the applicant, German Customs applied to this transaction a duty rate of 12,5%, namely the duty rate applicable to products manufactured by "all other companies" than those listed in Article 1 of Regulation No 2015/1483 mentioned in recital (3) above, where the applicant is included. The Commission informed the applicant accordingly and provided it with detailed information on the inadmissibility of the transaction.
- (13) For some other transactions the amount of the anti-dumping duty sought for refund was amended by the relevant German Authority after post-clearance check.
- (14) Therefore, the total amount of duties which could potentially be refunded is EUR "[omissis]".
- (15) 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**

- (16) The Commission sought and verified all the information deemed necessary to determine the exporting producer's dumping margin. A verification visit was carried out at the premises of the following company:
- "[omissis]".

### **Normal value**

- (17) 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 RIPs, 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.
- (18) The Commission subsequently identified those product types sold domestically that were identical or comparable with the types sold for export to the Union.
- (19) For each product type sold by the exporting producer on its domestic market and found to be identical or comparable with the product type sold for export to the Union, it was examined whether the domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type are sufficiently representative if the total volume of that product type sold on the

domestic market to independent customers during the RIPs represented at least 5% of the total volume of the comparable product type sold for export to the Union.

- (20) The Commission subsequently examined whether the domestic sales of stainless steel wires could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation, by establishing for each product type the proportion of profitable sales to independent customers on the domestic market.
- (21) Where the sales volume of a 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 that type, and where the weighted average sales price of that type was equal to or higher than the unit cost of production, normal value was based on the actual domestic price calculated as the weighted average of the prices of all domestic sales of that type made during the RIPs, irrespective of whether those sales were profitable or not.
- (22) Where the volume of profitable sales of a product type represented 80% or less of the total sales volume of that type, or where the weighted average price of that type was below the unit cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average price of only the profitable domestic sales of that type made during the RIPs.
- (23) As regards the product types that were not profitable, normal value was constructed in accordance with Article 2(3) and Article 2(6) of the basic Regulation. The normal value was constructed by adding to the cost of manufacturing of the exporting producer during the RIPs the following:
- the actual weighted average selling, general and administrative expenses (SG&A) pertaining to sales in the ordinary course of trade by the exporting producer during the RIPs, and
  - the actual weighted average profit realised for sales of the product types in the ordinary course of trade by the exporting producer that were profitable during the RIPs.

### **Export price**

- (24) The export price was based on the price actually paid or payable for the product concerned when sold for export to the Union by the exporting producer pursuant to Article 2(8) of the basic Regulation.

### **Comparison**

- (25) 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**

- (26) As provided for under Article 2(11) and Article 2(12) of the basic Regulation, for each 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 both RIPs.

- (27) 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 RIP1 and 9,9% for RIP2.

#### **E. REFUND CALCULATION**

- (28) Following the refund investigations, the revised anti-dumping duty rates that would be applicable to imports of the product concerned manufactured by "[omissis]" amounts to 2,4% in RIP1 (i.e. the dumping margin of 5,4% minus 3% countervailing duty) and 6,9% in RIP2 (i.e. the dumping margin of 9,9% minus 3% countervailing duty).
- (29) For the transactions invoiced during the RIP1, the exporting producer has been able to demonstrate that, as indicated in recital (27) 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 RIP1. Therefore, the amount to be refunded for RIP1 is EUR "[omissis]".
- (30) For the transactions invoiced during the RIP2, the exporting producer has been able to demonstrate that, as indicated in recital (27) above, the anti-dumping duty (6,9%) should have been lower than the level of the duty applied for the same period (8,6% from 1 October 2014 until 3 September 2015 and 9,4% from 4 September 2015 until 30 September 2015). Accordingly, the application for a refund is accepted for an amount corresponding to the difference (respectively 1,7% and 2,5%) between the duty actually paid and the duty which would result from RIP2. Therefore, the amount to be refunded for RIP2 is EUR "[omissis]".
- (31) The total amount to be refunded to the applicant is therefore EUR "[omissis]".

#### **F. DISCLOSURE**

- (32) 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 both the refund investigation periods 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.
- (33) 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**

- (34) On the basis of the findings of the present investigation, it is concluded that a comparison between the dumping margins established during the RIP1 and RIP2 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]".
- (35) 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*