

COMMISSION IMPLEMENTING DECISION

of 11.4.2019

**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)**

"This is the non-confidential version of the Commission Implementing Decision C(2019)2746 of 11 April 2019. 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, and in particular Article 11(8) thereof,

After informing the Member States,

Whereas:

A. PROCEDURE

- (1) By Implementing Regulation (EU) No 1106/2013¹, the Council imposed a definitive anti-dumping duty on imports of certain stainless steel wires originating in India, ('the product concerned'). 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 861/2013², the Council imposed a definitive countervailing duty on imports of the product concerned. The rates of the countervailing duty for individual Indian exporting producers were set in the range between 0% and 3.7% (*[omissis]*) and the rate of the countervailing duty for all other companies was set at 3.7%.
- (3) By Implementing Regulation (EU) 2015/1483³, the European Commission ('the Commission') amended the above measures following an absorption reinvestigation

¹ 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).

² Council Implementing Regulation (EU) No 861/2013 of 2 September 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 Commission Implementing Regulation (EU) 2015/1483 of 1 September 2015 amending Council Implementing Regulation (EU) No 1106/2013 imposing a definitive anti-dumping duty and collecting

pursuant to Article 12 of 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')⁴. 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 anti-dumping measures following an interim review request lodged *inter alia* by [omissis]⁶, pursuant to Article 11(3) of the basic Regulation. [omissis].

Refund application

- (5) Between 27 April 2016 and 22 May 2017, "[omissis]" ('the applicant'), an Indian exporting producer who also acted as an importer, submitted via the German authorities several applications for a refund of anti-dumping duties pursuant to Article 11(8) of the basic Regulation. The applications related to duties paid on imports of the product concerned and subject to the duty rate of 9.4% for the anti-dumping measures in force until 9 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 5 November 2015 and 12 January 2017. The transactions, for which a refund was claimed, were invoiced on Delivered Duty Paid commercial term by the applicant, being part of "[omissis]" ('the exporting producer'), between 5 October 2015 and 16 December 2016.

Refund Investigation period

- (7) The investigation of the dumping margin of the exporting producer was set to cover the period from 1 October 2015 to 31 March 2017 ('refund investigation period').

B. ARGUMENTS OF THE APPLICANT

- (8) The applicant claimed that the dumping margin of the exporting producer, 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 applications relating to most of the transactions referred to in recital (5) 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.

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).

⁴ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 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).

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 L 34, 9.2.2017, p. 21).

⁶ [omissis]

- (10) However, two transactions submitted for refund did not meet the conditions established by Article 11(8) of basic Regulation. In particular, according to the documents provided, German Customs applied to these transactions 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. Therefore, these two transactions, of EUR "[omissis]", were considered to be inadmissible. The Commission informed the applicant accordingly and provided it with information on the inadmissibility of the transaction.
- (11) For one transaction the amount of the anti-dumping duty sought for refund was amended by the relevant German Authority.
- (12) Therefore, the total amount of duties which could potentially be refunded is EUR "[omissis]".
- (13) The applications were considered to have been duly supported by evidence as of 12 January 2018, the date on which full evidence on export prices and normal values was submitted.

D. MERITS OF THE APPLICATION

General

- (14) 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 companies:
 - "[omissis]".

Normal value

- (15) 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 in India was representative during the refund investigation period, in other words, whether the total volume of such sales represented 5% or more of its export sales volume of stainless steel wires to the Union. This being confirmed, the domestic sales of the exporting producer were considered to be overall representative.
- (16) The Commission subsequently identified those product types sold domestically that were identical or comparable with the types sold for export to the Union.
- (17) 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 refund investigation period represents at least 5% of the total volume of export sales of the identical or comparable product type to the Union.
- (18) With regard to the exporting producer, not all product types were representative. For the product types that were not representative, the Commission proceeded as set out under recital (21).
- (19) The Commission subsequently examined the proportion of profitable sales to independent customers on the domestic market for each product type during the refund investigation period 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.

- (20) 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.
- (21) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the refund investigation period.
- (22) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the refund investigation period, 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.
- (23) As the result of those 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. In those cases, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (24) Normal value was constructed by adding the following to the average cost of production of the like product of the exporting producer during the refund investigation period:
- the weighted average selling, general and administrative ('SG&A') expenses incurred by the exporting producer on domestic sales of the like product, in the ordinary course of trade, during the refund investigation period; and
 - the weighted average profit realised by the exporting producer on domestic sales of the like product, in the ordinary course of trade, during the refund investigation period.
- (25) The cost of production was adjusted, where necessary.

Export price

- (26) 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

- (27) 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

- (28) As provided for under Article 2(11) and Article 2(12) of the basic Regulation, for the refund investigation period, 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 refund investigation period.
- (29) 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 11% for the refund investigation period.

E. REFUND CALCULATION

- (30) Following the refund investigations, the revised anti-dumping duty rates that would be applicable to imports of the product concerned manufactured by the exporting producer amounts to 8% in the refund investigation period (i.e. the dumping margin of 11% minus 3% countervailing duty).
- (31) For the transactions invoiced during the refund investigation period, the exporting producer has been able to demonstrate that the anti-dumping duty (8%) should have been lower than the level of the duty applied for the period of 3 September 2015 until 9 February 2017 (9.4%), while it has been higher for the period from 10 February 2017 onward (6.9%). Accordingly, the applications for a refund is accepted for an amount corresponding to the difference (1.4%) between the duty actually paid and the duty which would result in the period of 3 September 2015 until 9 February 2017.
- (32) The total amount to be refunded to the applicant is therefore EUR "[omissis]".

F. DISCLOSURE

- (33) On 21 January 2019 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.
- (34) Following this disclosure, the applicant provided comments on the calculation of the SG&A of the exporting producer. These comments were all accepted and reflected in the decision.
- (35) On 22 March 2019 an additional disclosure was provided to the applicant. No comments were received to this additional disclosure.

G. CONCLUSION

- (36) On the basis of the findings of the present investigation, it is concluded that a comparison between the dumping margins established during the refund investigation period and the anti-dumping duty in force shows that a refund should be granted for an amount of EUR "[omissis]", whilst the applications should be rejected in respect of the remaining EUR "[omissis]".
- (37) The applicant is hereby informed of its 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 applications submitted by "[omissis]" in respect of anti-dumping duties paid on its imports of certain stainless steel wires originating in India are 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, 11.4.2019

For the Commission
Cecilia MALMSTRÖM
Member of the Commission

