

**COMMISSION IMPLEMENTING DECISION (EU) 2018/1306****of 27 September 2018****terminating the anti-dumping proceeding concerning imports of certain stainless steel wires originating in India**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 266 thereof,

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 <sup>(1)</sup>,

Whereas:

**1. MEASURES IN FORCE AND JUDGMENT OF THE COURT****1.1. Measures in force**

- (1) In 2013, by Implementing Regulation (EU) No 1106/2013 <sup>(2)</sup> ('the contested Regulation') the Council imposed a definitive anti-dumping duty on imports of certain stainless steel wires originating in India ('the original measures') following an investigation pursuant to Article 5 of Council Regulation (EC) No 1225/2009 <sup>(3)</sup>.
- (2) By Notice of 1 April 2015 <sup>(4)</sup>, the Commission published a name and location change of the company Viraj Profiles Vpl. Ltd, Mumbai, Maharashtra into Viraj Profiles Limited, Palghar, Maharashtra and Mumbai, Maharashtra.
- (3) In September 2015, the original measures were amended by Commission Implementing Regulation (EU) 2015/1483 <sup>(5)</sup> following an absorption re-investigation.
- (4) In February 2017, by Commission Implementing Regulation (EU) 2017/220 <sup>(6)</sup> the original measures were amended following a partial interim review under Article 11(3) of Regulation (EU) 2016/1036.
- (5) By corrigenda published in May and October 2017 respectively <sup>(7)</sup>, the duty rate for non-cooperating exporting producers was reduced from 16,2 % to 12,5 % and the duty rate for the cooperating non-sampled companies was set at 5 % instead of 8,4 %.

**1.2. Judgment of the General Court of the European Union**

- (6) On 1 February 2014, Viraj Profiles Limited ('Viraj'), an Indian exporting producer of various stainless steel products, in particular stainless steel wires, lodged an application at the General Court of the European Union ('the General Court') seeking the annulment of the contested Regulation in so far as it applied to it. In its judgment of 11 July 2017 ('the judgment') in case T-67/14 *Viraj Profiles Ltd v Council* <sup>(8)</sup>, the General Court annulled the contested Regulation to the extent that it applies to Viraj.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<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 Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

<sup>(4)</sup> Notice concerning the anti-dumping and countervailing measures in force in respect of imports into the Union of certain stainless steel wires originating in India: change of name of one company subject to an individual anti-dumping and countervailing duty rate (OJ C 111, 1.4.2015, p. 5).

<sup>(5)</sup> 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 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>(6)</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>(7)</sup> OJ L 134, 23.5.2017, p. 52 and OJ L 255, 3.10.2017, p. 32.

<sup>(8)</sup> Judgment of the General Court (Seventh Chamber) of 11 July 2017, *Viraj Profiles Ltd v Council*, Case T-67/14, ECLI:EU:T:2017:481.

- (7) In particular, the General Court, in paragraph 144 of its judgment, ruled that the institutions infringed their obligation to state reasons by failing to provide detailed and relevant explanations to Viraj despite its repeated requests during the administrative proceeding. The institutions thus infringed their obligation to state reasons for their decision to adjust upwards the costs provided by Viraj. The General Court also examined whether the institutions committed a manifest error of assessment in making such an adjustment. It concluded, in paragraph 154 of its judgment, that it did not have all the information necessary in order to confirm that no manifest error of assessment was made by the institutions when determining the rate of adjustment.

### 1.3. Consequences of the judgment

- (8) In accordance with Article 266 of the Treaty of the Functioning of the European Union, the Union institutions must take the necessary steps to comply with the judgment.
- (9) In cases where proceedings consist of several administrative steps, the annulment of one of those steps does not annul the complete proceeding <sup>(1)</sup>. The anti-dumping investigation is an example of such a multi-step proceeding. Consequently, the annulment of the contested Regulation, in so far as it concerns Viraj, does not imply the annulment of the entire procedure prior to the adoption of that Regulation. Accordingly, in complying with the judgment, the Commission has the possibility to remedy the aspects of the proceeding which led to the annulment, while leaving unchanged those parts which are not affected by the judgment <sup>(2)</sup>.
- (10) It should be pointed out that apart from the finding that the institutions failed to provide detailed and relevant explanations for their decision to adjust upwards the costs provided by Viraj and the conclusion that the Court could not rule on whether a manifest error of assessment was made by the institutions when determining the rate of adjustment, all other findings reached in the contested Regulation which were not contested within the time-limits for a challenge or which were contested but rejected by the judgment or not examined by the General Court and therefore did not lead to the annulment of the contested Regulation, remain valid.
- (11) Therefore, the failure to state reasons should be re-examined in the light of the particular circumstances relating to Viraj.

## 2. PROCEDURE

- (12) Following the judgment, the Commission published a Notice <sup>(3)</sup> concerning the reopening of the anti-dumping investigation that led to the adoption of the contested Regulation. The reopening was limited in scope to the implementation of the judgment with regard to Viraj.
- (13) The Commission officially informed Viraj, the representatives of India and the Union industry of the reopening of the investigation.
- (14) Viraj and the Union industry were given the opportunity to comment and to request a hearing within the time-limit set out in the notice.
- (15) Following the initial comments received, all other interested parties known to be concerned at the time of the original investigation were contacted and given the opportunity to comment and to request a hearing.
- (16) All interested parties who so requested were granted the opportunity to be heard by the Commission services and/or the Hearing officer.
- (17) The Commission received submissions on various aspects of the reopening from Viraj and from the European Confederation of Iron and Steel Industries (Eurofer).
- (18) Viraj claimed that the General Court annulled the entire contested Regulation as far as it was concerned, as opposed to only annulling the contested Regulation in part. It claimed that the illegality committed by the Union Institutions which led to the annulment of the contested Regulation could not be cured and that therefore no re-opening of the investigation was warranted.

<sup>(1)</sup> Judgment of the Court of First Instance of 15 October 1998, *Industrie des poudres sphériques (IPS) v Council*, Case T-2/95, ECLI:EU:T:1998:242.

<sup>(2)</sup> Judgment of the Court (Fifth Chamber) of 3 October 2000, *Industrie des poudres sphériques v Council et al*, Case C-458/98 P, ECLI:EU:C:2000:531.

<sup>(3)</sup> Notice concerning the judgment of 11 July 2017 in case T-67/14 in relation to 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 (O) C 334, 6.10.2017, p. 3).

- (19) Viraj further claimed that if, however, the Union institutions nevertheless pursued the decision to re-open the investigation, such re-examination should not be limited to the obligation to state reasons but should entail a complete re-verification and assessment of the adjustments made by the Commission to its costs of production.
- (20) As stated in recital 9, the Court of First Instance in the *Industrie des poudres sphériques* case recognised that, in cases where a proceeding consists of several administrative steps, such as in an anti-dumping proceeding, the annulment of one of those steps does not annul the complete proceeding. Since the Union institutions are obliged to comply with the judgment, this implies the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the uncontested parts. Both claims were therefore rejected.
- (21) The complainant in the original investigation, Eurofer, submitted that the most appropriate action for the Commission would be to expand its reasoning on the specific points identified by the General Court in the judgment and re-impose the definitive anti-dumping duty.

### 3. ASSESSMENT FOLLOWING THE JUDGMENT

#### 3.1. Preliminary remarks

- (22) In its first plea before the General Court, Viraj alleged manifest errors in the calculation of its costs of production and a breach of the obligation to state reasons. The judgment rejected both the second and the third plea, respectively alleging errors made in the assessment of the causal link and alleging that the complaint did not contain the required evidence.
- (23) The arguments relating to the first plea were divided in two parts. In the first part, Viraj claimed that the Union institutions erred while applying an upward adjustment to the costs of production. In the second part, it claimed that certain selling, general and administrative ('SGA') costs were incorrectly taken into account or double-counted.
- (24) The General Court upheld the first part of the first plea in that the institutions infringed their obligation to state reasons. The second part of the first plea was rejected. As a consequence, for the purpose of complying with Article 266 of the Treaty of the Functioning of the European, the Commission addressed the first part of the first plea, namely the lack of reasoning regarding the assessment of costs of production.

#### 3.2. Evidence of dumping

##### 3.2.1. *The methodology used for the determination of cost of production*

- (25) The Commission, in line with Viraj's cost accounting methodology, established the manufacturing costs of production following a 3-step approach, corresponding to the steps in the production process of stainless steel wire.
- (26) The first step consisted of the determination of the manufacturing cost of production of stainless steel billets. In the Profit and Loss account of Viraj's published annual accounts, the cost of materials consumed, which consists of stainless steel scrap, nickel, ferro-chrome, silicon and other materials for producing billets from steel scrap, indicated an average cost that was found to be in line with the average raw material cost reported in the questionnaire reply, which was therefore considered reliable.
- (27) To the raw material costs of stainless steel billets, the following processing costs were added: auxiliary materials, direct labour, energy, depreciation and other costs; in order to determine the total stainless steel billet manufacturing cost per tonne.
- (28) In the second step, costs were added to transform the stainless steel billet into stainless steel wire rod, and the average raw material cost, mainly consisting of the cost of stainless steel billets already accounted for, was determined.
- (29) To this raw material cost of wire rod, the same type of processing costs were added (auxiliary materials, direct labour, energy, depreciation and other costs) establishing the total cost of wire rod per tonne.

- (30) The third and last step consisted of transforming the wire rod into wire. Taking the processing cost involved into account, the average cost of stainless steel wire was determined at a level comparable to the FIFO valuation in the annual accounts.
- (31) This further cross-checking of the reported costs with the data contained in the published annual accounts confirmed that the data reported for manufacturing costs were reliable and that the additional explanatory reconciliations between the questionnaire reply and the internal accounting data given in this respect by Viraj based on annexes submitted during the on-site investigation could be accepted.
- (32) Therefore, at the definitive stage of the investigation, the Commission considered that the reported manufacturing costs could be accepted. However, the SGA reported by Viraj in the questionnaire reply were found to be underreported in comparison to the corresponding costs found in the annual accounts. It was therefore considered appropriate to allocate SGA as reported in the annual accounts to the product concerned based on turnover, in accordance with Article 2(5) of Regulation (EC) No 1225/2009.
- (33) Subsequently, the manufacturing cost was adjusted by taking into account the elements of SGA mentioned in the annual accounts but not included in the manufacturing cost reported by Viraj. In order to achieve that, adjustments were made, expressed in terms of turnover of 8,27 % composed of 6,27 % for finance costs and 2 % for other SGA costs. The equivalent adjustment of the manufacturing cost amounted to 11,17 %, consisting of 8,47 % for finance costs and 2,70 % for other SGA costs.
- (34) The manufacturing cost was compared to the manufacturing cost reported by Viraj, after deduction of the packaging material cost. On that basis, an adjustment factor was determined and was applied to the manufacturing cost per product type reported by Viraj.

### 3.2.2. *Claims before the General Court*

- (35) Viraj claimed that the Union institutions should have consistently used the average cost as reported in its questionnaire reply, either excluding material packaging costs and packing labour or including all packaging costs.
- (36) In paragraphs 135 to 140 of its judgment, the General Court held that the Union institutions did not provide any explanation as to why the cost of manufacturing was determined excluding packaging costs instead of taking account the cost provided by Viraj. As regards the percentages added to the cost of manufacturing, the General Court concluded, in paragraph 141 of its judgment, that mere reference to the figures without further explanation was not sufficient to make it possible to understand which percentages were actually used for other costs and finance costs.

### 3.2.3. *Re-assessment by the Commission*

- (37) The Commission re-assessed the determination of the manufacturing costs.
- (38) The Commission concluded that, for reasons of correct comparison and in order to address the General Court's concerns, the costs of manufacturing as reported by Viraj, notably including packaging, should be used.
- (39) That reassessed choice of basis for further calculations pre-empts the first objection by Viraj and by extension by the General Court with regard to the uncertainty surrounding the determination of the manufacturing costs.
- (40) As a consequence, the adjustment factor mentioned in recital 34 was revised downward and applied to the manufacturing costs per product type reported by Viraj, following the same methodology described in recitals 33 and 34.
- (41) Since the methodology, which consisted of adjusting the manufacturing costs by allocating SGA costs on the basis of turnover in accordance with Article 2(5) of Regulation (EC) No 1225/2009, was accepted in principle by Viraj<sup>(1)</sup>, the adjustment of the manufacturing costs reported by Viraj itself by a factor that is based on its own published annual accounts, is therefore considered to be entirely traceable back to Viraj's own data. Consequently, Viraj has at its disposal all the required information regarding the determination of the manufacturing costs.

<sup>(1)</sup> Viraj did not dispute the method used to adjust the costs of production upward but stated that errors were made while applying the method.

- (42) After the recalculation of the normal value following the methodology described in recitals 25 to 33, the revised dumping margin for Viraj was established at 5,3 %. Viraj received its individual detailed calculations used to determine its revised dumping margin and was given the opportunity to comment.
- (43) That recalculation was also disclosed to Eurofer which claimed that Viraj should not be granted a favourable treatment and that reducing the dumping margin in a context of a failure of reasoning is unusually generous.
- (44) The Commission re-assessed the reasoning on which the anti-dumping measure is based and found an inconsistency in its approach. It was therefore obliged to adjust the findings to the objective facts in the file. Eurofer's claim was therefore rejected.

#### 3.2.4. Viraj's comments on the disclosure

- (45) Although Viraj repeated that it does not contest the methodology used by the Commission, it claimed that, as the Commission had accepted the manufacturing costs as originally reported by Viraj, those costs should also form the basis to which the finance and other SGA costs are added.
- (46) The Commission accepted the claim and took the revised manufacturing costs as the basis for calculating the adjustments for finance and other SGA costs.
- (47) Viraj also claimed that the upward adjustment of the manufacturing costs by 11,17 %, consisting of 8,74 % for finance costs and 2,70 % for other SGA costs, as described in recital 33, has been wrongly determined. In particular, Viraj claimed that other expenses (spares and consumables, power and fuel, and labour charges) which the Commission had already considered as a part of manufacturing costs should also be added to the denominator.
- (48) The Commission accepted Viraj's claim and adjusted the denominator accordingly. Consequently, the upward adjustment of manufacturing cost was set at 9,54 %, consisting of 7,25 % for finance costs and 2,29 % for other SGA costs.
- (49) Following the corrections of those conceptual and clerical errors, the revised dumping margin Viraj is set at 1,6 %. Given that Viraj's dumping margin is now a *de minimis* dumping margin, it is concluded that the investigation should be terminated without the imposition of anti-dumping measures with regard to imports of certain stainless steel wires originating in India produced by Viraj.

#### 4. DISCLOSURE

- (50) The Commission informed the interested parties of the essential facts and considerations on the basis of which it intended to terminate the investigation without imposing the definitive anti-dumping duty on imports of certain stainless steel wires originating in India produced by Viraj. Interested parties were also granted an opportunity to comment on the final disclosure.
- (51) All comments received were considered and taken into account, where appropriate.
- (52) This regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1035 of the European Parliament and of the Council <sup>(1)</sup>,

HAS ADOPTED THIS DECISION:

#### Article 1

The re-opening of the investigation further to the judgment of 11 July 2017 by the General Court in case T-67/14 *Viraj Profiles Ltd v Council* in relation to 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, manufactured by Viraj Profiles Limited, is hereby terminated.

<sup>(1)</sup> Regulation (EU) 2016/1035 of the European Parliament and of the Council of 8 June 2016 on protection against injurious pricing of vessels (OJ L 176, 30.6.2016, p. 1).

*Article 2*

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 27 September 2018.

*For the Commission*

*The President*

Jean-Claude JUNCKER

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