

COMMISSION DECISION

of 23 May 2012

terminating the anti-subsidy proceeding concerning imports of certain stainless steel fasteners and parts thereof originating in India

(2012/278/EU)

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 14 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Provisional measures

- (1) The European Commission ('the Commission'), by Regulation (EU) No 115/2012⁽²⁾ ('the provisional Regulation'), imposed a provisional countervailing duty on imports of certain stainless steel fasteners and parts thereof originating in India ('India' or 'the country concerned').
- (2) The proceeding was initiated on 13 May 2011⁽³⁾, following a complaint lodged on 31 March 2011 by the European Industrial Fasteners Institute (EIFI) ('the complainant'), on behalf of producers representing more than 25 % of total Union production of certain stainless steel fasteners and parts thereof.
- (3) As set out in recital 21 of the provisional Regulation, the investigation of subsidy and injury covered the period from 1 April 2010 to 31 March 2011 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2008 to the end of the IP ('the period considered').

1.2. Subsequent procedure

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional countervailing measures ('provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.

- (5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.
- (6) Subsequently, all parties were informed of the essential facts and considerations on the basis of which it was intended to terminate the anti-subsidy proceeding concerning imports of certain stainless steel fasteners and parts thereof originating in India and to release the amounts secured by way of the provisional duty ('final disclosure'). All parties were granted a period within which they could make comments on this final disclosure.

2. PRODUCT CONCERNED AND LIKE PRODUCT

- (7) After final disclosure, one party reiterated its comments regarding the definition of the product concerned and the like product provided in recitals 22 and 23 of the provisional Regulation claiming that certain product types should be excluded from the product scope of this investigation.
- (8) However, the investigation has confirmed that the different product types are covered by the description of the product concerned and like product and share the same basic physical, chemical and technical characteristics and end uses and therefore belong to the same product category. Therefore, this claim was rejected.
- (9) In the absence of other comments concerning the product concerned and the like product, recitals 22 and 23 of the provisional Regulation are hereby confirmed.

3. SUBSIDISATION

3.1. Introduction

- (10) In recital 24 of the provisional Regulation, reference was made to the following schemes, which allegedly involve the granting of subsidies:

(a) Duty Entitlement Passbook Scheme (DEPBS);

(b) Advance Authorisation Scheme (AAS);

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ OJ L 38, 11.2.2012, p. 6.

⁽³⁾ OJ C 142, 13.5.2011, p. 36.

- (c) Export Promotion Capital Goods Scheme (EPCGS);
- (d) Export Oriented Units Scheme (EOUS);
- (e) Focus Product Scheme (FPS);
- (f) Export Credit Scheme (ECS);
- (g) Electricity Duty Exemption.
- (11) The Union industry questioned whether the Commission failed to take into account a number of subsidy schemes, and as a result believed that the subsidies found to be received by Indian producers were underestimated.
- (12) In reply to this, it should be noted that the complaint contained a great number of national and local subsidy schemes, which were included in the questionnaire to exporting producers in India and investigated by the Commission. However, only for the schemes listed in recital 10 above, it was found that the investigated exporting producers in the sample had received subsidies.
- (13) In the absence of any other comments, recitals 24 to 27 of the provisional Regulation are hereby confirmed.
- (14) No comments were received on the findings regarding FPS and on the Electricity Duty Exemption. As regards DEPBS, AAS, EPCGS and ECS, the cooperating exporting producers provided detailed comments. Most of these comments related to the calculation of the subsidy amounts and certain comments resulted in slight adjustments to those calculations. However, the overall conclusions on these schemes were not affected by such comments and are herewith confirmed. Comments were also received on the EOUS. Taking account of the impact of such comments on the EOUS, as summarised below in recitals 13 to 19, there is no need to reproduce in detail the other comments received on the abovementioned four schemes.
- entire production of goods or services may be set up under the EOUS. In return, companies enjoying this EOU status are entitled to a number of concessions listed under recital 71 of the provisional Regulation. These concessions are financial contributions of the Government of India (GOI) within the meaning of Article 3(1)(a)(ii) of the basic Regulation and they confer a benefit upon the EOUs. They are contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first paragraph, point (a) of the basic Regulation.
- (16) In the provisional Regulation it was stated that the EOUS could not be considered as a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation as it did conform to the strict rules laid down in Annex I (items (h) and (i)), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. Indeed, it could not be established that the GOI has a verification system or procedure in place to confirm whether and in what amounts duty and/or sales tax-free procured inputs were consumed in the production of the exported product (see Annex II(II)(4) to the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) to the basic Regulation). The verification system in place aims at monitoring the NFE earning obligation and not the consumption of imports in relation to the production of exported goods.
- (17) Subsequent to the provisional disclosure, no substantive arguments were raised against the nature of the EOUS, as described above, in particular the absence of an effective verification system and its countervailability. Therefore, the conclusions on the EOUS, as summarised in recitals 78-81 of the provisional Regulation, are herewith confirmed.

3.2.2. Submission of Viraj Profiles Limited

3.2. Export oriented units scheme (EOUS)

3.2.1. General

- (15) It should be recalled that, as also mentioned under Section 3.5 of the provisional Regulation, a crucial obligation of an Export Oriented Unit (EOU) as set out in the Foreign Trade (FT)-policy 2009-2014 is to achieve net foreign exchange (NFE) earnings, which means that in a reference period (five years) the total value of exports has to be higher than the total value of imported goods. In principle, all enterprises that undertake to export their
- (18) The sole sampled party with an EOU status was Viraj Profiles Limited ('Viraj'). The EOU subsidy rate established for this producer at the provisional stage was 2,73 % out of a total subsidy rate of 3,2 %. Viraj represented, in volume, 87 % of Indian exports to the Union.
- (19) As already mentioned in recital 77 of the provisional Regulation, Viraj submitted detailed comments on the scheme. The exporting producer concerned claimed that the subsidy calculated under the scheme would not be compliant with Article 15(1) of the basic Regulation, according to which the amount of the countervailable duty shall not exceed the amount of countervailable subsidies actually received by the company. It claimed that, therefore, the overall subsidy rate for the company would be below 2 %, i.e. *de minimis*. The company submitted detailed accounting data to support its claim.

(20) The claim was duly analysed. The detailed accounting data provided by Viraj in its submissions could be linked to the accounting data verified during the verification visit and these data suggested that indeed the countervailable benefit received by the company during the investigation period had been overestimated. Therefore, the countervailing duty for Viraj has been recalculated accordingly.

(21) Consequently, the EOUS subsidy rate of Viraj was recalculated and is definitely set at 0,44 %. Including the subsidy rates established for EPCGS (recalculated at 0,05 %), ECS (recalculated at 0,12 %) and Electricity duty exemption (0,09 %), Viraj's total subsidy rate was definitively established at 0,7 %, i.e. below the *de minimis* threshold.

3.2.3. Comments of the Union industry on the final disclosure

(22) After final disclosure, Union industry submitted comments arguing that the recalculations made in relation to EUOS benefits received by Viraj were unjustified and incorrect. It argued that the Commission's analysis was incomplete, inconsistent with the way the Institutions usually countervail this scheme and that it failed to take into account other possible scenarios where Viraj could have unduly disposed of the duty-exempted imports. Furthermore, the Union industry alleged that Viraj's late submission of the non-confidential comments on the provisional disclosure seriously prejudiced the Union industry's right of defence.

(23) With respect to the recalculation of Viraj's subsidy margin, it should be clarified that this exporting producer had demonstrated that the established provisional countervailable duty was exceeding the amount of countervailable subsidies actually received. Indeed, the company demonstrated that the potential duty foregone had provisionally been overestimated and, therefore, this had to be corrected in the final calculation. It would have been against the provisions of Article 3 of the basic Regulation to countervail certain financial contributions which, clearly and beyond doubt, cannot be considered to confer any benefit to Viraj. However, it is still considered that, with regard to certain transactions, the scheme has conferred specific subsidies to the company concerned which should be countervailed. This approach, therefore, is fully consistent with the way the Institutions have countervailed the scheme in the past. Accordingly, the revision of the EOUS subsidy margin is in full compliance with Article 15(1) of the basic Regulation.

(24) As to the alleged violation of the Union industry's right of defence, it should be noted that Viraj's comments on the EOUS subsidy calculation were also included in two open submissions filed prior to the imposition of provisional measures, as well as in two later open submissions. The first and key submission in this regard, which led the Commission to analyse the issue in-depth and, eventually to reconsider its position, had

been submitted in December 2011 and was already referred to in recital 77 of the provisional Regulation. All aforementioned documents had been included in the file for inspection by interested parties without delay. Viraj's comments to the provisional disclosure merely summarised the position already taken in its previous submissions. While the open version of Viraj's comments to the provisional disclosure was indeed filed by Viraj at a late stage, it was promptly made available by the Commission to the Union industry, which was granted an additional time period to submit comments thereon.

(25) In view of the above considerations, the claims of the Union industry had to be rejected.

3.2.4. Other subsidy issues

(26) Comments were also received on the calculation of the subsidy margin for the cooperating non-sampled exporting producers and the residual subsidy margin calculation. Moreover, the sole exporting producer which had claimed individual examination insisted that its request should be addressed. However, in view of the conclusions under causation below, it is not necessary to take a final position on these matters.

4. UNION INDUSTRY

(27) In the absence of comments concerning the Union production and the Union industry recitals 120 to 123 of the provisional Regulation are hereby confirmed.

5. INJURY

5.1. Preliminary remarks and Union consumption

(28) In the absence of comments concerning the preliminary remarks and Union consumption, recitals 124 to 130 of the provisional Regulation are hereby confirmed.

5.2. Imports from the country concerned

(29) One party claimed that the provisional analysis of the development of import prices from India and price undercutting, based on average prices, was misleading, since allegedly it does not take into account the variation of the product mix from one year to the other during the period considered.

(30) In this respect, it is worth noting that data on prices per product type are only available for the IP, for which exporting producers and Union producers are asked to provide a detailed transaction listing as part of their questionnaire replies. Therefore, in the absence of data per product type for the other years within the period considered, a meaningful analysis of the development of import prices can only be made based on average prices.

It should also be noted that the party in question did not provide any evidence to demonstrate why the analysis regarding the development of import prices would be misleading. Therefore, this claim was rejected.

- (31) As regards undercutting, it is recalled that as mentioned in recital 134 of the provisional Regulation, in order to determine price undercutting during the IP, the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports from India to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for the existing customs duties and post-importation costs.
- (32) Furthermore, as mentioned in recital 135 of the provisional Regulation, the price comparison was made on a type-by-type basis for transactions at the same level of trade. Therefore, the claim of this party as regards undercutting was rejected.
- (33) In the absence of any other comments concerning imports from the country concerned, recitals 131 to 135 of the provisional Regulation are hereby confirmed.

5.3. Economic situation of the Union industry

5.3.1. Production, production capacity and capacity utilisation

- (34) One party claimed that the analysis made in the provisional Regulation concerning the decrease in the production of the Union industry was misleading and claimed that the decrease in production volumes should be seen in the light of unutilised capacity of the Union industry, which also showed a decreasing trend during the period considered.
- (35) The investigation showed that the decline in production coincided with the decrease in sales and the increase of stocks. This situation led some Union producers to close some of their production lines, which explains the decrease in capacity utilisation. The claim of the party was therefore rejected.
- (36) In the absence of any other comments concerning production, production capacity and capacity utilisation, recitals 137 and 138 of the provisional Regulation are hereby confirmed.

5.3.2. Sales volume and market share

- (37) In the absence of comments concerning the development of sales volume and market share of the Union industry, recital 139 of the provisional Regulation is hereby confirmed.

5.3.3. Growth

- (38) In the absence of comments concerning growth, recital 140 of the provisional Regulation is hereby confirmed.

5.3.4. Employment

- (39) In the absence of comments concerning employment, recitals 141 and 142 of the provisional Regulation are hereby confirmed.

5.3.5. Average unit prices in the Union

- (40) In the absence of comments concerning average unit prices in the Union, recitals 143 and 144 of the provisional Regulation are hereby confirmed.

5.3.6. Profitability, cash flow, investments, return on investments and ability to raise capital

- (41) In the absence of comments concerning profitability, cash flow, investments, return on investments and ability to raise capital, recitals 145 to 148 of the provisional Regulation are hereby confirmed.

5.3.7. Stocks

- (42) One party requested the Commission to provide actual figures with regard to the development of stock levels over the period considered instead of indexed figures, claiming that indexation did not allow it to make effective comments or to assess the level of stocks as a percentage of sales of the Union industry.

- (43) For reasons of confidentiality, as explained in recital 127 of the provisional Regulation, certain micro indicators, including stocks, had to be indexed. In any event, the indexation of closing stocks of the Union industry in table 10 of the provisional Regulation provides a reasonable understanding of the development of stocks during the period considered. Therefore this claim was rejected.

- (44) In the absence of other comments concerning stocks, recital 149 of the provisional Regulation is hereby confirmed.

5.3.8. Magnitude of the subsidy margin

- (45) It is recalled that the largest Indian exporting producer representing 87 % of the Indian exports to the Union in the IP was found not to be subsidised. Consequently subsidised imports accounted for 13 % of the total volume of the product concerned exported from India to the Union. Given the volume, market share and prices of the subsidised imports from India, the impact on the Union industry of the actual subsidy margins may be considered to be negligible.

5.3.9. Conclusion on injury

- (46) The investigation confirmed that most of the injury indicators showed a declining trend during the period considered. Therefore the conclusion reached in recitals 151 to 153 of the provisional Regulation that the Union industry suffered material injury within the meaning of Article 8(5) of the basic Regulation is confirmed.

6. CAUSATION

6.1. Introduction

- (47) In accordance with Articles 8(5) and Article 8(6) of the basic Regulation, it was examined whether the subsidised imports originating in India have caused injury to the Union industry to a degree that enables it to be classified as material. Known factors other than the subsidised imports, which could at the same time be injuring the Union industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the subsidised imports.
- (48) As explained in recitals 18 to 21 above, the subsidy margin of the largest Indian exporting producer, accounting for 87 % of all Indian exports to the Union in the IP, was found to be *de minimis* for this individual exporting producer in the meaning of Article 14(5) of the Basic Regulation, consequently considered as non-subsidised for the purpose of this investigation. Therefore, only a mere 13 % of the Indian exports of the product concerned to the Union during the IP were subsidised. These subsidised imports had a market share of 2 % in the IP.

6.2. Effect of the subsidised imports

- (49) The investigation showed that the Union consumption increased by 9 % over the period considered, while sales volume of the Union industry decreased by 14 % and market share dropped by 21 %.
- (50) With regard to prices, the average import prices of the subsidised imports were found to undercut the average sales prices of the Union industry on the Union market. However, they were around 12 % higher than the prices of the Indian company not found to be subsidised.
- (51) Based on the above, it is considered that the limited import volume of the subsidised imports from India, which had higher prices than the non-subsidised imports, may only have played a very limited role, if any, in the deterioration of the injurious situation of the Union industry.

6.3. Effect of other factors

6.3.1. Non-subsidised imports from India

- (52) The total volume of imports from India increased dramatically by 65 % over the period considered, increasing their market share from 12,1 % to 18,3 %. However, as explained above, non-subsidised imports represented 87 % of the total Indian export volume in

the IP, corresponding to a market share of 15 % in the IP, as opposed to the market share of 2 % of the subsidised imports from India in the same period.

- (53) Prices of imports from India decreased overall by 9 % in the period considered, remaining always lower than import prices from the rest of the world and sales prices of the Union industry. However, it is noteworthy that, as explained in recital (50), the average prices of the non-subsidised imports were found to undercut the prices of the Union industry much more than those of the subsidised imports.

6.3.2. Imports from other third countries

- (54) In the absence of any comments concerning imports from other third countries recitals 161 to 165 of the provisional Regulation are hereby confirmed.

6.3.3. Economic crisis

- (55) In the absence of any comments concerning the impact of the economic crisis on the injury suffered by the Union industry, recitals 166 to 169 of the provisional Regulation are hereby confirmed.

6.3.4. Export performance of the sampled Union industry

- (56) In the absence of any comments concerning the export performance of the sampled Union industry, recital 170 of the provisional Regulation is hereby confirmed.

6.4. Conclusion on causation

- (57) The above analysis demonstrated that over the period considered there was a substantial increase in the volume and market share of the low-priced imports originating in India. It was also found that these imports were constantly undercutting the prices charged by the Union industry on the Union market.
- (58) However, in view of the finding that exports by the largest Indian exporting producer, which represented 87 % of the Indian exports to the Union in the IP, were not subsidised, it is considered that a causal link between the subsidised imports, accounting for a mere 13 % of the total quantity exported from India, and the injury suffered by the Union industry cannot be sufficiently established. Indeed, it cannot be argued that the subsidised Indian exports, in view of their limited volume and very limited market share (2 %) and the fact that their prices were on average 12 % higher than those of the non-subsidised imports, would be causing the injury suffered by the Union industry.

- (59) The analysis of the other known factors, which could have caused injury to the Union industry, including the non-subsidised imports, imports from other third countries, the economic crisis and the export performance of the sampled Union industry showed that the injury suffered by the Union industry is due to the impact of the non-subsidised imports from India which represented 87 % of all Indian exports to the Union in the IP and which were made at significantly lower prices than the subsidised imports.

7. TERMINATION OF THE ANTI-SUBSIDY PROCEEDING

- (60) In the absence of a material causal link between the subsidised imports and the injury suffered by the Union industry, it is considered that countervailing measures are unnecessary and therefore the present anti-subsidy proceeding should be terminated in accordance with Article 14(2) of the basic Regulation.
- (61) The complainant and all other interested parties were informed accordingly and were given the opportunity to comment. The comments received did not alter the conclusion that the present anti-subsidy proceeding should be terminated,

HAS ADOPTED THIS DECISION:

Article 1

The anti-subsidy proceeding concerning imports of certain stainless steel fasteners and parts thereof, currently falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70, originating in India, is hereby terminated.

Article 2

Amounts secured by way of provisional countervailing duties pursuant to Regulation (EU) No 115/2012 on imports of certain stainless steel fasteners and parts thereof originating in India shall be released.

Article 3

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

Done at Brussels, 23 May 2012.

For the Commission

The President

José Manuel BARROSO
