

COMMISSION REGULATION (EU) No 419/2013

of 3 May 2013

imposing a provisional countervailing duty on imports of certain stainless steel wires originating in India

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 12 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 10 August 2012, the European Commission ('the Commission') announced, by a notice published in the *Official Journal of the European Union* ⁽²⁾ ('the notice of initiation'), the initiation of an anti-subsidy proceeding ('the anti-subsidy proceeding' or 'the present proceeding') with regard to imports into the Union of certain stainless steel wires originating in India ('the country concerned').
- (2) On the same day, the Commission announced by a notice published in the *Official Journal of the European Union* ⁽³⁾, the initiation of an anti-dumping proceeding with regard to imports into the Union of certain stainless steel wires originating in India and commenced a separate investigation ('the anti-dumping proceeding').
- (3) The anti-subsidy proceeding was initiated following a complaint lodged on 28 June 2012 by the European Confederation of Iron and Steel Industries (Eurofer) ('the complainant') on behalf of producers representing more than 50 %, of the total Union production of certain stainless steel wires. The complaint contained prima facie evidence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an investigation.
- (4) Prior to the initiation of the proceeding and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Government of India ('the GOI') that it had received a properly documented complaint alleging that subsidised imports of certain stainless steel wires originating in India were causing material injury to the Union industry. The GOI was invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. In this case, no mutually agreed solution was found.

1.2. Parties concerned by the investigation

- (5) The Commission officially advised the complainant, other known Union producers, the known exporting producers, known importers and users, and the Indian authorities of the initiation of the investigation.
 - (6) Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
 - (7) In view of the large number of exporting producers in the country concerned, unrelated importers and Union producers involved in the investigation and in order to complete the investigation within the statutory time limits, the Commission announced in the notice of initiation that it had decided to limit to a reasonable number the exporting producers in the country concerned, unrelated importers and Union producers that would be investigated by selecting a sample in accordance with Article 27 of the basic Regulation (the process is also referred to as 'sampling').
- 1.2.1. Sampling of exporting producers
- (8) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in the country concerned were requested to make themselves known to the Commission and to provide information specified in the notice of initiation.
 - (9) In total, 18 exporting producers, some belonging to the same group, provided the requested information within the deadline set in the notice of initiation, agreed to be included in the sample and 7 of them asked for individual examination in case they would not be included in the sample. Fifteen of these cooperating companies reported exports of stainless steel wires to the Union during the investigation period. Therefore, the sample was chosen on the basis of the information submitted by these 15 exporting producers.
 - (10) In accordance with Article 27 of the basic Regulation, the Commission selected a sample based on the largest representative volume of exports of the product concerned to the Union which could reasonably be investigated within the time available. The sample selected consisted of two individual companies and one group of companies consisting of four related companies, together representing more than 63 % of the total volume of exports to the Union of the product concerned.

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ OJ C 240, 10.8.2012, p. 6.

⁽³⁾ OJ C 240, 10.8.2012, p. 15.

- (11) In accordance with Article 27(2) of the basic Regulation all known exporting producers concerned and the relevant Indian authorities were also consulted on the selection of a representative sample. No comments to the selection of the sample were made.
- (12) As mentioned in recital (10) above the sample was limited to a reasonable number of companies which could be investigated within the time available. The companies investigated for the purpose of the investigation of subsidisation are listed in recital (19) below.
- (13) Moreover, as mentioned in recital (9), initially 7 requests for individual examination were received. Hence, it was considered that at this stage the individual examination would be unduly burdensome and would prevent the timely completion of the investigation. However, the requests made by the exporters that submitted the necessary information within the time limits will be examined in the remainder of the investigation.

1.2.2. Sampling of Union producers

- (14) The Commission announced in the notice of initiation that it had provisionally selected a sample of Union producers. This sample initially consisted of five producers that were known to the Commission prior to the initiation of the investigation to produce stainless steel wires in the Union. The Commission selected the sample on the basis of the sales, production volume and geographical location. Interested parties were also invited by the notice of the initiation to make their views known on the provisional sample. The analysis of the questionnaire replies revealed that one selected Union producer had a related company in the Union also involved in the manufacturing and sales of stainless steel wires. Thus, the six sampled Union producers accounted for 46,5 % of the estimated total Union production. The sample is considered representative of the Union industry.

1.2.3. Sampling of importers

- (15) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all unrelated importers were requested to make themselves known to the Commission and to provide information specified in the notice of initiation.
- (16) A total of nine unrelated importers provided the requested information and agreed to be included in the sample. The Commission selected a sample of three companies accounting for 23,8 % of Indian imports into the Union during the IP on the basis of the largest volume of imports in to the Union. However, two of the importers selected in the sample did not submit the questionnaire replies. Therefore, sampling at this stage of the investigation could not be applied and cooperation will be sought from the other importers in the remainder of the investigation.

1.2.4. Questionnaire replies and verification visits

- (17) Questionnaires were sent to the GOI, the three sampled (groups of) exporting producers in India and to the

exporting producers which had requested individual examination, to the six sampled Union producers, to the three sampled unrelated importers and to nine known users.

- (18) Questionnaire replies were received from the GOI, the three sampled (groups of) exporting producers, one of those exporting producers which requested individual examination, the six sampled producers in the Union, one unrelated importer and three users.
- (19) The Commission sought and verified all the information provided by interested parties and deemed necessary for a provisional determination of subsidisation, resulting injury and Union interest. Verification visits were carried out at the premises of GOI in Delhi, and the following parties:

Producers in the Union:

- Hagener Feinstahl GmbH, Hagen, Germany
- Inoxfil S.A., Igualada, Spain
- Rodacciai SPA, Milano, Italy
- Trafilerie Brambilla SPA, Calziocorte, Italy
- Ugitech Group:
 - Ugitech France S.A., Bourg en Bresse, France
 - Sprint Metal Edelstahl, Hemer, Germany

Exporting producers in India:

- Raajratna Metal Industries, Ahmedabad, Gujarat
- Viraj Profiles Vpl. Ltd., Thane, Maharashtra
- Venus group:
 - Venus Wire Industries Pvt. Ltd, Mumbai, Maharashtra
 - Precision Metals, Mumbai, Maharashtra
 - Hindustan Inox Ltd., Mumbai, Maharashtra
 - Sieves Manufacturer India Pvt. Ltd., Mumbai, Maharashtra

1.3. Investigation period and period considered

- (20) The investigation of subsidisation and injury covered the period from 1 April 2011 to 31 March 2012 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2009 to the end of the investigation period ('period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(21) The product concerned is wire of stainless steel containing by weight:

— 2,5 % or more of nickel, other than wire containing by weight 28 % or more but not more than 31 % of nickel and 20 % or more but not more than 22 % of chromium,

— less than 2,5 % of nickel, other than wire containing by weight 13 % or more but not more than 25 % of chromium and 3,5 % or more but not more than 6 % of aluminium,

— originating in India, currently falling within CN codes 7223 00 19 and 7223 00 99.

(22) One party claimed that so called “highly technical” product types exist, which are different from the other types of the product concerned produced in India and also in the Union. They further alleged that unlike most types exported from India to the Union, the technical types are not commodities, but specific product types produced for specific uses in certain steel grades and certain diameters, and should not be covered by the investigation.

(23) At this stage, it appears that the technical types were part of the product definition and they have similar basic physical, chemical, and technical characteristics compared to other types of the product concerned. Moreover, it appears that these types are also produced by Union industry, hence the technical types are covered by the scope of the investigation.

2.2. Like product

(24) The investigation has shown that the product concerned and the product produced and sold on the domestic market of India as well as the product produced by the Union industry and sold on the Union market have the same basic physical, chemical and technical characteristics and uses. They are therefore provisionally considered to be alike within the meaning of Article 2(c) of the basic Regulation.

3. SUBSIDISATION

3.1. Introduction

(25) On the basis of the information contained in the complaint and the replies to the Commission’s questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

(a) Duty Entitlement Passbook Scheme (‘DEPBS’);

(b) Duty Drawback Scheme (‘DDS’);

(c) Advance Authorisation Scheme (‘AAS’);

(d) Export Promotion Capital Goods Scheme (‘EPCGS’);

(e) Export Credit Scheme (‘ECS’);

(f) Focus Market Scheme (‘FMS’)

(g) Special Economic Zones/Export Oriented Units (‘SEZ/EOU’)

(26) The schemes (a), (c - d) and (f - g) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (‘Foreign Trade Act’). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in ‘Foreign Trade Policy’ documents, which are issued by the Ministry of Commerce every five years and updated regularly. The Foreign Trade Policy document relevant to the IP of this investigation is “Foreign Trade Policy 2009-2014 (‘FTP 09-14’). In addition, the GOI also sets out the procedures governing FTP 09-14 in a ‘Handbook of Procedures, Volume I’ (‘HOP I 09-14’). The Handbook of Procedures is updated on a regular basis.

(27) The ECS specified above under (e) is based on sections 21 and 35A of the Banking Regulation Act 1949, which allow the Reserve Bank of India (‘RBI’) to direct commercial banks in the field of export credits.

(28) The DDS specified above under (b) is based on section 75 of the Customs Act of 1962, on section 37 of the Central Excise Act of 1944, on sections 93A and 94 of the Financial Act of 1994 and on the Customs, Central Excise Duties and Service Tax Drawback Rules of 1995. Drawback rates are published on a regular basis; those applicable to the IP were the All Industry Rates (AIR) of Duty Drawback 2011-12, published in notification No. 68 / 2011- Cus. (N.T). The duty drawback scheme is also referred to as a duty remission scheme in chapter 4 of FTP 2009-2014.

3.2. Duty Entitlement Passbook Scheme (‘DEPBS’)

(a) Legal Basis

(29) The detailed description of the DEPBS is contained in chapter 4.3 of the FTP 09-14 as well as in chapter 4 of the HOP I 09-14.

(b) Eligibility

(30) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) Practical implementation of the DEPBS

- (31) An exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of Standard Input Output Norms ('SIONs') taking into account a presumed import content of inputs in the export product and the customs duty incidence on such presumed imports, regardless of whether import duties have actually been paid or not. The DEPBS rate for the product concerned during the IP of the current investigation was 5 % with a value cap of 97 Rs/kg.
- (32) To be eligible for benefits under this scheme, a company must export. At the time of the export transaction, a declaration must be made by the exporter to the Indian authorities indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue an export shipping bill during the dispatch procedure. This document shows, *inter alia*, the amount of DEPBS credit which is to be granted for that export transaction. At this point in time, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit.
- (33) It was found that in accordance with Indian accounting standards, DEPBS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods - except capital goods and goods where there are import restrictions. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. DEPBS credits are freely transferable and valid for a period of 24 months from the date of issue.
- (34) Application for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. *De facto* no strict deadlines apply to DEPBS credits. The electronic system used to manage DEPBS does not automatically exclude export transactions exceeding the submission deadline mentioned in chapter 4.47 HOP I 09-14. Furthermore, as clearly provided in chapter 9.3 of the HOP I 09-14, applications received after the expiry of submission deadlines can always be considered subject to the imposition of a minor penalty fee (i.e. 10 % of the entitlement).
- (35) It was found that two companies in the sample used this scheme during the first two quarters of the IP.

(d) Conclusions on the DEPBS

- (36) The DEPBS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A DEPBS credit is a financial contribution by the GOI since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would otherwise be due. In addition, the DEPBS credit confers a benefit upon the exporter because it improves its liquidity.
- (37) Furthermore, the DEPBS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (38) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation since it does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. In particular, an exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I, and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DEPBS.

(e) Abolishment of the DEPBS and transition to DDS

- (39) By means of Public Notice No 54 (RE-2010)/2009-2014 of 17 June 2011, the DEPBS received a final three months extension which prolonged its applicability until 30 September 2011. As no further extension was published subsequently, the DEPBS has effectively been withdrawn from 30 September 2011 onwards. Therefore it was necessary to verify whether measures could be imposed in accordance with Article 15(1) of the basic Regulation.
- (40) The GOI explained to the Commission that upon withdrawal of the DEPBS scheme, companies could opt for

other duty exemption/remission schemes defined under chapter 4 of FTP 09-14, i.e. the Advance Authorisation Scheme (AAS) or the Duty Drawback Scheme (DDS).

- (41) The investigation revealed that both sampled companies started availing themselves of the DDS immediately after the DEPBS was withdrawn. It must be noted that DDS has been introduced in 1995 and coexisted with DEPBS during the first two quarters of the IP and for a number of years before the IP. DDS could however not be availed simultaneously with DEPBS on the same exports.
- (42) It must be noted that the GOI took steps to organise a smooth transition from DEPBS to DDS, as demonstrated in circular No. – 42 /2011-Customs, dated 22/09/2011. In this circular it is explained that "the [duty] drawback schedule this year incorporates items which were hitherto under the DEPBS scheme". The same circular states that for sectors operating under DEPBS, it "has been decided to provide a smooth transition for items in these sectors while incorporating these in the drawback schedule. As a transitory arrangement, these items will suffer a modest reduction from their DEPBS rates, ranging from 1 % to 3 % for most items." In other words, this circular indicates that the duty drawback rates in force w.e.f. 01/10/2011 were determined so that they would confer a similar benefit as the withdrawn DEPBS.
- (43) The DDS rates applicable as of 1 October 2011 to the product concerned were indeed found to confer similar levels of subsidisation as the DEPBS was until the 30 September 2011. The investigation confirmed also very close levels of the subsidy margins of DEPBS and DDS for all the sampled companies, each of them using DEPBS in the first 6 months of the IP and DDS in the following 6 months of the IP.
- (44) Recitals (41) to (43) above demonstrate that, even though the DEPBS scheme was withdrawn, the underlying benefits continued to be conferred without discontinuation and at an almost identical level by providing a seamless transition to the duty drawback scheme. For that reason, it is concluded that the subsidies have not been withdrawn within the meaning of Article 15(1) of the basic Regulation and that DEPBS is countervailable.

(f) Calculation of the subsidy amount

- (45) In accordance with Articles 3(2) and 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient, which is found to exist during the investigation period. In this regard, it was considered that the benefit is conferred on the recipient at the time when an export transaction is made under this scheme. At this moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which

shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, it is considered appropriate to assess the benefit under the DEPBS as being the sums of the credits earned on export transactions made under this scheme during the IP.

- (46) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amounts as numerator, pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover of the product concerned during the IP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.
- (47) Based on the above, the subsidy rates established in respect of this scheme for the concerned companies during the IP amounted to 0,58 % and 0,93 %, 1,04 %, 1,32 %, 2,04 % for the companies of Venus group respectively.

3.3. Duty Drawback Scheme ('DDS')

(a) Legal Basis

- (48) The detailed description of the DDS is contained in the Custom & Central Excise Duties Drawback Rules, 1995 as amended by successive notifications.

(b) Eligibility

- (49) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) Practical implementation

- (50) An eligible exporter can apply for drawback amount which is calculated as a percentage of the FOB value of products exported under this scheme. The drawback rates have been established by the GOI for a number of products, including the product concerned. They are determined on the basis of the average quantity or value of materials used as inputs in the manufacturing of a product and the average amount of duties paid on inputs. They are applicable regardless of whether import duties have actually been paid or not. The DDS rate for the product concerned during the IP was 4 % of FOB value, subject to a cap of 5 Rs/kg whichever is lower.
- (51) To be eligible to benefits under this scheme, a company must export. At the moment when shipment details are entered in the Customs server (ICEGATE), it is indicated that the export is taking place under the DDS and the DDS amount is fixed irrevocably. After the shipping company has filed the Export General Manifest (EGM)

and the Customs office has satisfactorily compared that document with the shipping bill data, all conditions are fulfilled to authorise the payment of the drawback amount by either direct payment on the exporter's bank account or by draft.

(52) The exporter also has to produce evidence of realisation of export proceeds by means of a Bank Realisation Certificate (BRC). This document can be provided after the drawback amount has been paid but the GOI will recover the paid amount if the exporter fails to submit the BRC within a given delay.

(53) The drawback amount can be used for any purpose.

(54) It was found that in accordance with Indian accounting standards, the duty drawback amount can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation.

(55) Two of the sampled companies were found to use the DDS during the last two quarters of the IP.

(d) Conclusion on DDS

(56) The DDS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A duty drawback amount is a financial contribution by the GOI as it takes form of a direct transfer of funds by the GOI. In addition, the duty drawback amount confers a benefit upon the exporter, because it improves its liquidity.

(57) Furthermore, the DDS is contingent in law upon export performance, and is therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(58) This scheme cannot be considered as permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I point (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation.

(59) There is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of point (i) of Annex I and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for the DDS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DDS.

(60) This is confirmed by GOI's circular no 24/2001 which clearly states that "[duty drawback rates] have no relation to the actual input consumption pattern and actual incidence suffered on inputs of a particular exporter or individual consignments [...]" and instructs regional authorities that "no evidence of actual duties suffered on imported or indigenous nature of inputs [...] should be insisted upon by the field formations along with the [drawback claim] filed by exporters".

(61) In view of the above, it is concluded that DDS is countervailable.

(e) Calculation of the subsidy amount

(62) In accordance with Articles 3(2) and 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient, which is found to exist during the investigation period. In this regard, it was considered that the benefit is conferred on the recipient at the time when an export transaction is made under this scheme. At this moment, the GOI is liable to the payment of the drawback amount, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of drawback which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, it is considered appropriate to assess the benefit under the DDS as being the sums of the drawback amounts earned on export transactions made under this scheme during the IP.

(63) In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover of the product concerned during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(64) Based on the above, the subsidy rates established in respect of this scheme for the cooperating companies concerned amounted to 0,61 % and 1,14 %, 1,77 %, 1,68 %, 1,91 % for the companies of Venus group respectively.

3.4. Advance Authorisation Scheme ('AAS')

(a) Legal basis

(65) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the FTP 09-14 and chapters 4.1 to 4.30 of the HOP I 09-14.

(b) Eligibility

- (66) The AAS consists of six sub-schemes, as described in more detail in recital (67) below. Those sub-schemes differ *inter alia* in the scope of eligibility. Manufacturer-exporters and merchant-exporters "tied to" supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement sub-schemes. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the "deemed export" categories mentioned in paragraph 8.2 of the FTP 09-14, such as suppliers of an export oriented unit ('EOU'), are eligible for the AAS deemed export sub-scheme. Eventually, intermediate suppliers to manufacturer-exporters are eligible for "deemed export" benefits under the sub-schemes Advance Release Order ('ARO') and back to back inland letter of credit.

(c) Practical implementation

- (67) The AAS can be issued for:

- (i) *Physical exports*: This is the main sub-scheme. It allows for duty-free import of input materials for the production of a specific resulting export product. "Physical" in this context means that the export product has to leave Indian territory. An import allowance and export obligation including the type of export product are specified in the licence;
- (ii) *Annual requirement*: Such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The licence holder can – up to a certain value threshold set by its past export performance – import duty-free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resulting product falling under the product group using such duty-exempt material;
- (iii) *Intermediate supplies*: This sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter who produces the intermediate product can import duty-free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product;
- (iv) *Deemed exports*: This sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as "deemed exports" to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of the FTP 09-14. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an export-oriented unit ('EOU') or to a company situated in a special economic zone ('SEZ');
- (v) *Advance Release Order ('ARO')*: The AAS holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases the Advance Authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of the FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs;
- (vi) *Back to back inland letter of credit*: This sub-scheme again covers indigenous supplies to an Advance Authorisation holder. The holder of an Advance Authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation will be validated by the bank for direct import only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to deemed export benefits as set out in paragraph 8.3 of the FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).

- (68) Two companies in the sample received concessions under the AAS linked to the product concerned during the IP. These companies made use of one of the sub-schemes, i.e. AAS physical exports. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.

- (69) For verification purposes by the Indian authorities, an Advance Authorisation holder is legally obliged to maintain "a true and proper account of consumption and utilisation of duty-free imported/domestically procured goods" in a specified format (chapters 4.26,

4.30 and Appendix 23 HOP I 09-14), i.e. an actual consumption register. This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under Appendix 23 is true and correct in all respects.

- (70) With regard to the sub-scheme used during the IP by the companies concerned, i.e. physical exports, the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the Authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the Authorisation. The volume of imports allowed under the AAS is determined by the GOI on the basis of Standard Input Output Norms ('SIONs') which exist for most products including the product concerned.
- (71) Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (24 months with two possible extensions of 6 months each).
- (72) The investigation established that the verification requirements stipulated by the Indian authorities were either not honoured or not yet tested in practice.
- (73) Both verified companies maintained a certain production and consumption register. However, the consumption register did not allow to verify which inputs were consumed in the production of the exported product and in what amounts. Regarding the verification requirements referred to in recital (69) above, there were no records kept by the companies which would prove that the external audit of the consumption register took place. In sum, it is considered that the investigated exporters were not able to demonstrate that the relevant FT-policy provisions were met.

(d) Conclusion on the AAS

- (74) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, namely it constitutes a financial contribution of the GOI since it decreases duty revenue which would otherwise be due and it confers a benefit upon the investigated exporters since it improves their liquidity.
- (75) In addition, AAS physical exports are clearly contingent in law upon export performance, and therefore deemed

to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under these schemes.

- (76) The sub-scheme used in the present case cannot be considered permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The GOI did not effectively apply a verification system or a procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). It is also considered that the SIONs for the product concerned were not sufficiently precise and that themselves cannot constitute a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation).
 - (77) The sub-scheme is therefore countervailable.
- (e) Calculation of the subsidy amount
- (78) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an "excess" remission of duties. According to Article 3(1)(a)(ii) and Annex I(i) of the basic Regulation only when the conditions of Annexes II and III of the basic Regulation are met that the excess remission of duties can be countervailed. However, these conditions were not fulfilled in the present case. Thus, if an adequate monitoring process is not demonstrated, the above exception for drawback schemes is not applicable and the normal rule of the countervailing of the amount of unpaid duties (revenue forgone), applies, rather than of any purported excess remission. As set out in Annexes II(II) and III(II) of the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To the contrary, according to Article 3(1)(a)(ii) of the basic Regulation, the investigating authority only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.

(79) The subsidy amount for the companies which used the AAS was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the sub-scheme during the IP (numerator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount was allocated over the export turnover of the product concerned during the IP as appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(80) The subsidy rate established in respect of this scheme for the concerned companies for the IP amounts to 2,43 % and 0,15 %, 0 %, 0 %, 0 % for the companies of Venus group respectively.

3.5. Export Promotion Capital Goods Scheme ('EPCGS')

(a) Legal basis

(81) The detailed description of EPCGS is contained in chapter 5 of FTP 09-14 as well as in chapter 5 HOP I 09-14.

(b) Eligibility

(82) Manufacturer-exporters, merchant-exporters "tied to" supporting manufacturers and service providers are eligible for this scheme.

(c) Practical implementation

(83) Under the condition of an export obligation, a company is allowed to import capital goods (new and second-hand capital goods up to 10 years old) at a reduced rate of duty. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. The scheme provides for a reduced import duty rate of 3 % applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period. Under FTP 09-14 the capital goods can be imported with a 0 % duty rate under the EPCGS but in such case the time period for fulfilment of the export obligation is shorter.

(84) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail himself of the benefit for duty free import of components required to manufacture such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of supply of capital goods to an EPCGS licence holder.

(85) It was found that all the three companies in the sample received concessions under the EPCGS which could be allocated to the product concerned in the IP.

(d) Conclusion on EPCGS

(86) The EPCGS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI, since this concession decreases the GOI's duty revenue which would be otherwise due. In addition, the duty reduction confers a benefit upon the exporter, because the duties saved upon importation improve the company's liquidity.

(87) Furthermore, EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(88) EPCGS cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I point (i), of the basic Regulation, because they are not consumed in the production of the exported products.

(e) Calculation of the subsidy amount

(89) The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned. The amount so calculated, which is attributable to the IP, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the investigation period in India was considered appropriate for this purpose. Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation.

(90) In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the appropriate export turnover during the IP as the appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(91) The subsidy rate established with regard to this scheme during the IP for the companies concerned amounted to respectively 0,09 %, 0,6 % and 0,02 %, 0 %, 0 %, 0 % for the companies of Venus group respectively.

3.6. Export Credit Scheme ('ECS')

(a) Legal basis

- (92) The details of the scheme are set out in the Master Circular DBOD No. DIR.(Exp).BC 01/04.02.02/2007-08 (Rupee/Foreign Currency Export Credit) and Master Circular DBOD No. DIR.(Exp).BC 09/04.02.02/2008-09 (Rupee/Foreign Currency Export Credit) of the Reserve Bank of India ('RBI'), which is addressed to all commercial banks in India.

(b) Eligibility

- (93) Manufacturing exporters and merchant-exporters are eligible for this scheme.

(c) Practical implementation

- (94) Under this scheme, the RBI sets maximum ceiling interest rates applicable to export credits which are mandatory, both in Indian rupees and in foreign currency, which commercial banks can charge an exporter. The ECS consists of two sub-schemes, the Pre-Shipment Export Credit Scheme ("packing credit"), which covers credits provided to an exporter for financing the purchase, processing, manufacturing, packing and/or shipping of goods prior to export, and the Post-Shipment Export Credit Scheme, which provides for working capital loans with the purpose of financing export receivables. The RBI also directs the banks to provide a certain amount of their net bank credit towards export finance.
- (95) As a result of the RBI Master Circulars exporters can obtain export credits at preferential interest rates as compared with the interest rates for ordinary commercial credits ("cash credits"), which are solely set under market conditions. The difference in rates might decrease for companies with good credit ratings. In fact, high rating companies might be in a position to obtain export credits and cash credits at the same conditions.

- (96) It was found that the two of the sampled companies used this scheme during the IP.

(d) Conclusion on the ECS

- (97) The preferential interest rates of an ECS credit set by the RBI Master Circulars mentioned in recital (95) can decrease the interest costs of an exporter as compared with credit costs purely set by market conditions and confer in this case a benefit in the meaning of Article 3(2) of the basic Regulation on such an exporter. Export financing is not *per se* more secure than domestic

financing. In fact, it is usually perceived as being more risky and the extent of security required for a certain credit, regardless of the finance object, is a purely commercial decision of a given commercial bank. Rate differences with regard to different banks are the result of the methodology of the RBI to set maximum lending rates for each commercial bank individually.

- (98) Despite the fact that the preferential credits under the ECS are granted by commercial banks, this benefit is a financial contribution by a government within the meaning of Article 3(1)(a)(iv) of the basic Regulation. In this context, it should be noted that neither Article 3(1)(a)(iv) of the basic Regulation nor the Agreement on Subsidies and Countervailing Measures require a charge on the public accounts, e.g. reimbursement of the commercial banks by the GOI, to establish a subsidy, but only government direction to carry out functions illustrated in points (i), (ii) or (iii) of Article 3(1)(a) of the basic Regulation. The RBI is a public body and falls therefore under the definition of "government" as set out in Article 2(b) of the basic Regulation. It is 100 % government-owned, pursues public policy objectives, e.g. monetary policy, and its management is appointed by the GOI. The RBI directs private bodies, within the meaning of the second indent of Article 3(1)(a)(iv) of the basic Regulation, since the commercial banks are bound by the conditions it imposes, *inter alia*, with regard to the maximum ceilings for interest rates on export credits mandated in the RBI Master Circulars and the RBI provisions that commercial banks have to provide a certain amount of their net bank credit towards export finance. This direction obliges commercial banks to carry out functions mentioned in Article 3(1)(a)(i) of the basic Regulation, in this case to provide loans in the form of preferential export financing. Such direct transfer of funds in the form of loans under certain conditions would normally be vested in the government, and the practice differs, in no real sense, from practices normally followed by governments, within the meaning of Article 3(1)(a)(iv) of the basic Regulation. This subsidy is deemed to be specific and countervailable since the preferential interest rates are only available in relation to the financing of export transactions and are therefore contingent upon export performance, pursuant to Article 4(4), first subparagraph, point (a) of the basic Regulation.

(e) Calculation of the subsidy amount

- (99) The subsidy amount has been calculated on the basis of the difference between the interest paid for export credits used during the IP and the amount that would have been payable for ordinary commercial credits used by the company concerned. This subsidy amount (numerator) has been allocated over the total export turnover during the IP or total export turnover of the product concerned in the IP for the credits where clear link with the product concerned could be established, which could be used as the appropriate denominator in accordance with Article 7(2) of the basic Regulation because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

- (100) The subsidy rate established in respect of this scheme for the companies concerned for the IP amounts to 0,61 % and 0,08 %, 0,28 %, 0,03 %, 0,10 % for the companies of Venus group respectively.

3.7. Focus Market Scheme ('FMS')

(a) Legal basis

- (101) The detailed description of FMS is contained in paragraph 3.14 of FTP 09-14 and in paragraph 3.8 of HOP I 09-14.

(b) Eligibility

- (102) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) Practical implementation

- (103) Under this scheme exports of all products to countries notified under tables 1 and 2 of Appendix 37(C) of HOP I 09-14 are entitled to duty credit equivalent to 3 % of the FOB value. As of 1 April 2011, exports of all products to countries notified under table 3 of Appendix 37(C) ('Special Focus Markets') are entitled to a duty credit equivalent to 4 % of the FOB value. Certain types of export activities are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units. Also excluded from the scheme are certain types of products, e.g. diamonds, precious metals, ores, cereals, sugar and petroleum products.

- (104) The duty credits under FMS are freely transferable and valid for a period of 24 months from the date of issue of the relevant credit entitlement certificate. They can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods.

- (105) The credit entitlement certificate is issued from the port from which the exports have been made and after realisation of exports or shipment of goods. As long as the applicant provides to the authorities copies of all relevant export documentation (e.g. export order, invoices, shipping bills, bank realisation certificates), the GOI has no discretion over the granting of the duty credits.

- (106) It was found that one of the sampled companies used this scheme during the IP.

(d) Conclusion on FMS

- (107) The FMS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation.

A FMS duty credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the FMS duty credit confers a benefit upon the exporter, because it improves its liquidity.

- (108) Furthermore, FMS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

- (109) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I point (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. There is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of point (i) of Annex I and Annexes II and III of the basic Regulation. An exporter is eligible for FMS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from FMS. Moreover, an exporter can use FMS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I point (i) of the basic Regulation, because they are not consumed in the production of the exported products.

(e) Calculation of the subsidy amount

- (110) The amount of countervailable subsidies was calculated on the basis of the benefit conferred on the recipient, which is found to exist during the IP as booked by the cooperating exporting producer on an accrual basis as income at the stage of export transaction. In accordance with Article 7(2) and 7(3) of the basic Regulation this subsidy amount (numerator) has been allocated over the export turnover during the IP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

- (111) The subsidy rate established with regard to this scheme during the IP for the company concerned amounted to 0,13 %, 0,71 %, 0,07 %, 0 % for the companies of Venus group respectively.

3.8. Special Economic Zones/Export Oriented Units ('SEZ/EOU')

- (112) It was found that only one sampled company availed of the EOU scheme during the IP. However, the investigation established that the level of countervailable subsidies found for this company is below *de minimis*, thus EOU scheme was not analysed further.

3.9. Amount of countervailable subsidies

- (113) Based on the findings, as summarised in the below table, the total amount of countervailable subsidies, expressed *ad valorem*, were found to range from 3,15 % to 4,32 %:

Scheme	Company	Raajratna	Venus Group	Viraj
DEPBS (*)		0,58 %	0,93 %, 1,04 %, 1,32 %, 2,04 %	—
DDS (*)		0,61 %	1,14 %, 1,77 %, 1,68 %, 1,91 %	—
AAS (*)		2,43 %	0,15 %, 0 %, 0 %, 0 %	—
EPCGS (*)		0,09 %	0,02 %, 0 %, 0 %, 0 %	0,63 %
ECS (*)		0,61 %	0,08 %, 0,28 %, 0,03 %, 0,10 %	—
FMS (*)		—	0,13 %, 0,71 %, 0,07 %, 0 %	—
EOU (*)		—	—	0,95 %
TOTAL		4,32 %	3,15 (**)	1,57 % (***)

(*) Subsidies marked with an asterisk are export subsidies

(**) Total subsidy margin on the basis of consolidated calculation for the Group

(***) *de minimis*

- (114) In accordance with Article 15(3) of the basic Regulation, the subsidy margin for the cooperating companies not included in the sample, calculated on the basis of the weighted average subsidy margin established for the cooperating companies in the sample which had their individual subsidy margins above *de minimis*, is 3,82 %.
- (115) With regard to all other exporters in India, the Commission first established the level of cooperation. The comparison between Eurostat import data and the volume of exports to the Union of the product concerned reported for the investigation period by the cooperating companies or groups with exports of the product concerned to the Union during the investigation period shows that the cooperation of Indian exporting producers was very high. Given this high level of cooperation, the subsidy rate for all non-cooperating companies is set at the level for the company with the highest individual rate, i.e. 4,32 %.

4. UNION INDUSTRY

4.1. Union industry

- (116) The like product was manufactured by 27 Union producers. They are deemed to constitute the Union industry within the meaning of Article 9(1) and Article 10(8) of the basic Regulation and will hereinafter be referred to as the 'Union industry'.

4.2. Union production

- (117) All available information concerning the Union industry, such as information provided in the complaint, data collected from Union producers before and after initiation of the investigation and the questionnaire responses of the sampled Union producers, was used in order to establish the total Union production for the investigation period.
- (118) It should be mentioned that one Union producer related to an Indian exporting producer and which opposed the initiation of the investigation is also included in the definition of the Union industry. On this basis, the total Union production was estimated to be around 139 141 tonnes during the IP. This figure includes the production of all Union producers that made themselves known and the estimated production volume of the rest of the Union producers, which did not come forward in the investigation.

4.3. Sampling of Union producers

- (119) As indicated in recital (14) above six regarding the Union producers were included in the sample representing 46,5 % of the estimated total Union production of the like product.

5. INJURY

5.1. Union consumption

- (120) Union consumption was established on the basis of the total sales volume of the Union industry on the Union market and the total imports. The year of 2009 was marked by unprecedented high prices of nickel, the main raw material used to produce the product concerned and the like product, and the global negative effects of the financial crisis, which together led to a particularly low level of Union consumption in that year. However, the market situation improved, as shown in the table below and Union consumption increased by 50 % between 2009 and the IP.

	2009	2010	2011	IP
Consumption (in tonnes)	131 436	187 280	196 476	197 327
Index (2009 = 100)	100	142	149	150

Source: Eurostat, complaint and questionnaire replies

5.2. Imports into the Union from the country concerned

- (121) The import volumes of the cooperating companies, that based on the sample were found not to have benefited from the subsidy schemes within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation during the investigation period, were excluded from the total imports from India. Since the import data relating to the product concerned refer to two companies, it was considered appropriate for confidentiality reasons to show them in indexed form.

5.2.1. Volume and market share of the imports concerned

- (122) During the period considered subsidised imports into the Union from the cooperating exporting producers were found to have developed in terms of volume and market share as follows:

	2009	2010	2011	IP
Volume (Index)	100	172	218	210
Market share (Index)	100	121	146	140

Source: Eurostat, complaint and questionnaire replies

- (123) Subsidised import volumes from India increased considerably by 110 % over the period considered. The increase was particularly marked between 2009 and 2010 when imports from India surged by 72 % and when the Union consumption increased by 42 %. However, whilst consumption only increased by 5 %

between 2010 and the IP, the import volume from India continued increasing significantly by 22 % in the same period.

- (124) The market share of subsidised imports from India has increased significantly by 40 % during the period considered.

5.2.2. Prices of imports and price undercutting:

- (125) As explained above in recital (22) one party expressed concerns regarding the fact that the anti-subsidy questionnaire did not allow to distinguish in particular certain types of the product concerned, which in their view are different.
- (126) This concern was addressed in the questionnaire by enlarging the so-called product control numbers (PCN) in order to clearly identify the relevant types in the investigation in particular for the price comparison exercise. At this stage, the investigation revealed that Indian exporting producers only exported limited quantities of these highly technical types. Nevertheless, it is pointed that the changes made in the PCN ensured that prices of certain product types were compared directly with the prices of similar product types.

- (127) The table below shows the average price of subsidised imports

	2009	2010	2011	IP
Average price (Index)	100	118	137	135

Source: Eurostat and questionnaire replies

- (128) The average import prices from India increased by 35 % during the period considered, but they remained below the sales prices of the Union industry during the same period (see recital (145) below). This explains the surge in import volume and the significant increase by 40 % in the market share held by Indian exporters in the same period.

- (129) In order to determine the 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-work level, were compared to the corresponding weighted average prices per product type of the subsidised imports from the two Indian producers that were sampled and received countervailable subsidies above de minimis level to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for post-importation costs.

- (130) The result of the comparison, when expressed as a percentage of the sampled Union producers' turnover

during the IP, showed a weighted average undercutting margin of 12,5 % by the subsidised imports from the country concerned on the Union market. The lower prices of the subsidised imports compared to the Union ones during the period considered, explain the significant increase in Indian import volume and in the market share held by the imports from India between 2009 and the IP.

5.3. Economic situation of the Union industry

5.3.1. Preliminary remarks

- (131) In accordance with Article 8(4) of the basic Regulation, the examination of the impact of the subsidised imports from India on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (132) As mentioned in recital (14), sampling was used for the examination of the possible injury suffered by the Union industry.
- (133) For the purpose of the injury analysis, the Commission distinguished between macro-economic and micro-economic injury indicators. In this regard, the economic situation of the Union industry is assessed on the basis of (a) macro-economic indicators, namely indicators such as production, production capacity, capacity utilisation, sales volume, market share and growth, employment, productivity, magnitude of the

actual subsidy margin and recovery from past subsidisation, for which the data was collected at the level of the total Union industry and on the basis of (b) micro-economic indicators, namely indicators such as average unit prices, unit cost, profitability, cash flow, investments, return on investment and ability to raise capital, stocks and labour costs, for which the data was collected at the level of the sampled Union producers.

- (134) It is noteworthy that all available information concerning the Union industry including information provided in the complaint, data collected from the Union producers before and after the initiation of the investigation, and the questionnaire responses of the sampled Union producers, was used in order to establish the macro-economic indicators and in particular the data pertaining to the non-sampled Union producers.

- (135) The micro-economic indicators were established on the basis of information provided by the sampled Union producers in their questionnaire replies.

5.3.2. Macro-economic indicators

(a) Production, production capacity and capacity utilisation

- (136) The trends for Union production, production capacity and the utilization of the capacity developed as follows during the period considered:

	2009	2010	2011	IP
Production volume (tonnes)	105 646	140 363	138 795	139 141
<i>Index (2009 = 100)</i>	100	133	131	132
Production capacity (tonnes)	244 236	246 324	245 922	246 599
<i>Index (2009 = 100)</i>	100	101	101	101
Capacity utilization	43 %	57 %	56 %	56 %
<i>Index (2009 = 100)</i>	100	132	130	130

Source: Complaint, questionnaire replies

- (137) Union production increased by 32 % during the period considered reflecting to a certain extent the positive evolution of consumption. Production volumes, however, stagnated between 2010 and the IP.

- (138) Whilst capacity utilization improved and increased by 13 percentage points during the period considered, production capacity remained fundamentally stable during the period considered.

(b) Sales volume, market share and growth

- (139) The trends concerning sales volumes, market share and growth developed as follows during the period considered:

	2009	2010	2011	IP
Sales volume (tonnes)	88 796	124 641	124 007	124 217
Index (2009 = 100)	100	140	140	140
Market share	67,6 %	66,6 %	63,1 %	62,9 %
Index (2009 = 100)	100	98	93	93

Source: Complaint, questionnaire replies

(140) After a considerable increase between 2009 and 2010, in the context of an increasing consumption, the sales volume to unrelated customers slowed down and did not benefit from the continued increase in demand (4,9 % between 2010 and 2011). This is also reflected in the upward trend of closing stocks, which increased overall by 41 % during the period considered as shown in recital (153) below. Furthermore, the Union industry market share decreased by 4,7 percentage points during the period considered despite the steady increase of 50 % in consumption.

(141) As indicated in recital (120) above, the Union consumption was growing with 50 % between 2009 and the IP, while the volume of subsidised imports increased significantly, by 110 % during the same period, as indicated in recital (122)(123) above. The growth of the Union market between 2009 and the IP was therefore partially absorbed by subsidised imports, while the Union sales of the Union industry grew by 40 % during the same period. This shows that Union industry could not fully benefit from the growth in Union consumption due to the increasing market share of subsidised imports.

(c) Employment and productivity

	2009	2010	2011	IP
Number of employees	1 726	1 687	1 729	1 747
Index (2009 = 100)	100	98	100	101
Productivity (unit/employee)	61	83	80	80
Index (2009 = 100)	100	136	131	130

Source: Complaint, questionnaire replies

(142) Notwithstanding the difficult financial situation described in recitals (147) - (152) below, the employment of the Union industry remained relatively stable during the period considered. Given the increased production volume (see recital (136) above), productivity as measured as output in tonnes per person employed per year increased by 30 % during the same period suggesting that the Union industry made significant efforts to improve its efficiency.

(d) Magnitude of the actual subsidy margin and recovery from past subsidisation

(143) The subsidy margins of two of the sampled Indian exporting producers are above the *de minimis* level (see recital (113) above). Given the sector of the product concerned, the volume, market share and prices of the subsidised imports from India, discussed above, the impact on the Union industry of the actual subsidy margin cannot be considered to be negligible.

(144) It is recalled that in 1999 anti-dumping and anti-subsidy countervailing measures were imposed on the product concerned. However, given the time lap between the expiry of the measures that were introduced in 1999 and the current investigation, there is no data available to assess the effect of the past subsidization⁽¹⁾. The investigation in any case did not bring forward any evidence that the industry is still recovering from the past subsidisation.

5.3.3. Micro-economic indicators

(e) Average unit selling prices on the Union market and unit cost of production

(145) During the period considered the average unit selling price and the cost of production of the Union producers developed as follows:

	2009	2010	2011	IP
Average unit selling price in the Union to unrelated customers	2 988	3 833	4 185	4 018
Index (2009 = 100)	100	128	140	134
Unit cost of production (EUR/tonne)	3 542	3 931	4 127	4 011
Index (2009 = 100)	100	111	117	113

Source: Questionnaire replies

⁽¹⁾ Council Regulation (EC) No 1599/1999, OJ L 189, 22.7.1999, p. 126; Council Regulation (EC) No 1600/1999, p. 19, OJ L 189, 22.7.1999, p. 19 and Council Regulation (EC) No 1601/1999, OJ L 189, 22.7.1999, p. 1 Council Regulation (EC) No 1599/1999 of 12 July 1999 and Council Regulation (EC) No 1601/1999 of 12 July 1999, OJ L 189 22.7.1999

- (146) The average sales prices of the sampled Union producers to unrelated customers in the Union increased by 34 % over the period considered. The rise reflects the general increase in the cost of raw material experienced by the industry during the same period. In 2011 and during the IP the Union producers could only moderately increase the prices to cover the increasing costs of production, enough just to keep profitability slightly above 1 % in 2011 and at break-even level in the IP. Thus, as the figures show in the table above, even a significant

increase in sales price did not allow the Union industry to achieve a reasonable level of profit.

- (f) Profitability, cash flow, investments, return on investments and ability to raise capital

- (147) During the period considered the profitability, the cash flow, the return on investment and their ability to raise capital of the Union producers developed as follows:

	2009	2010	2011	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	– 18,5 %	– 2,6 %	1,4 %	0,2 %
Cash flow (EUR)	– 19 790 367	– 226 207	7 778 576	5 096 869
Investments (EUR)	4 653 604	8 436 096	4 552 443	4 156 522
Index (2009 = 100)	100	181	98	89
Return on investments	– 68,8 %	– 11,2 %	6,7 %	0,8 %

Source: Questionnaire replies

- (148) The profitability of the sampled Union producers was established by expressing the pre-tax net profit of the sales of the like product to unrelated customers as a percentage of the relevant turnover. In 2009, the sampled Union producers were loss making but started to recover in 2010 in line with the increase by 50 % in consumption described in recital (120) above. However, even if profitability slightly increased, profit levels at 0,2 % were still far below a reasonable level of profitability in the steel sector. Indeed, the target profit margin was provisionally set at 5 %, because it is considered that it corresponds to the margin that could be reasonably achieved by an industry of this type in the sector of the product investigated under normal conditions of competition, i.e. in the absence of subsidised imports, on sales of the like product in the Union as indicated by the Union industry. Furthermore, this 5 % is a pre-tax profit margin which was considered as an appropriate minimum in other investigation into similar products in the same sector.

- (149) During the IP the sampled Union producers managed to break even; however, the price pressure exerted by subsidised imports prevented them from aligning their prices with costs and thus to achieve satisfactory results. This situation is also explained by the fact that the product under investigation is considered to be a commodity, and thus prices are the main factor, which is driving customer's choices.

- (150) Cash flow, which is the ability of the industry to self-finance its activities and which was calculated on the basis of operations, was negative until 2010. Although it improved in 2011, it decreased by 34 % between 2011 and the IP.

- (151) The evolution of profitability and cash flow during the period considered limited the ability of the sampled Union producers to invest in their activities and undermined their development. As a consequence, the ability of the Union producers to raise capital and finance costs was hindered. Although the sampled Union producers managed to make some investments in 2010, they dropped thereafter and in particular during the IP when they decreased by 51 % compared to 2010 levels. Moreover, even if the return on investment related to the like product, expressed as the profit in percentage of the net book value of investments, became positive in 2011, it decreased considerably, by 5,9 percentage points during the IP, reaching a low level of 0,8 %.

- (152) In light of the above, it can be concluded that the financial performance of the sampled Union producers remained somewhat fragile during the IP.

- (g) Stocks

- (153) The level of stocks of the sampled Union producers increased by 41 % during the period considered; their increase coincided with losses in market share, in particular during the IP.

	2009	2010	2011	IP
Closing stocks (tonnes)	4 395	5 289	5 469	6 214
Index (2009 = 100)	100	120	124	141

Source: Questionnaire replies

(h) Labour costs

- (154) The average labour costs of the sampled Union producers increased modestly during the period considered, and therefore they do not represent a determining factor in the rise of cost of production.

	2009	2010	2011	IP
Average labour costs per employee (EUR)	52 356	57 182	55 907	54 509
Index (2009 = 100)	100	109	107	104

Source: Questionnaire replies

5.4. Conclusion on injury

- (155) The investigation showed that the Union industry did not fully benefit from the increase in consumption during the period considered and in particular during the IP. Initially, between 2009 and 2010, most of the injury indicators pertaining to the Union industry largely improved but, subsequently, its economic situation stagnated or even deteriorated.
- (156) Indeed, in the context of a booming market, certain indicators such as production and sales volume of the Union industry increased significantly between 2009 and 2010 but then registered a slowdown from 2010 onwards. This situation occurred despite a continued increase in consumption.
- (157) Furthermore, the injury indicators related to the financial performance of the Union industry such as cash flow, investment and profitability were seriously affected by the price pressure which prevailed in the Union market, in particular during the IP. The Union industry was not able to increase its prices sufficiently in order to cover its costs of production between 2009 and 2010. Profitability was improving between 2009 and 2011 by making a slight profit of 1,4 % in 2011; however, it started deteriorating again during the IP when it reached only a breakeven level. This means that the ability of the Union industry to raise capital and recover was also undermined.
- (158) In light of the foregoing, it is provisionally concluded that the Union industry suffered material injury within the meaning of Article 8(5) of the basic Regulation.

6. CAUSATION

6.1. Introduction

- (159) In accordance with Article 8(5) and (6) of the basic Regulation, the Commission examined whether the subsidised imports from India had caused injury to the Union industry to a degree sufficient to be considered 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 the possible injury caused by these other factors was not attributed to the subsidised imports.

6.2. Effect of the subsidised imports

- (160) The investigation showed that the Union consumption increased by 50 % over the period considered and at the same time the volume of imports originating in India more than doubled. On the other hand, the increase of subsidised imports coincided with a slowdown in the sales volume of the Union industry to unrelated parties between 2010 and the IP.
- (161) With regard to the price pressure prevailing on the Union market during the period considered, it was found that the average import prices from India remained constantly lower than the average sales prices of the Union industry. By undercutting the Union industry on average by 12,5 % during the IP, Indian subsidised imports increased their market share from 2009 to the IP by 40 %, whilst the market share of the Union industry decreased by 4,7 percentage points (from 67,6 % in 2009 to 62,9 % in the IP). The loss in market share reveals that the Union industry could only benefit from the increased consumption to a limited extent.
- (162) In view of the increasing cost of production, the Union industry tried to increase the unit price to unrelated customers as shown in recital (145) above. However, due to the price pressure exerted by the increasing volumes of subsidised Indian imports as stated above, the price increase was not sufficient to sustain the growing costs, thus the Union industry could not reach satisfactory profit levels that could be considered necessary for this particular industry.
- (163) Based on the above, it is concluded that the surge of subsidised imports from India at prices constantly undercutting those of the Union industry have had a determining role for the material injury suffered by the Union industry.

6.3. Effect of other factors

6.3.1. Non subsidised imports

- (164) The table below shows the development of the non-subsidised export volume and prices during the period considered. Their volume represented less than one third of Indian exports during the IP and followed the same trend as the subsidised imports.

	2009	2010	2011	IP
Volume (Index)	100	172	218	210
Average price (Index)	100	118	137	135

Source: Questionnaire replies

- (165) Based on these facts, it is considered that the possible negative impact the non-subsidized imports may have had on the Union market was not such as to break the causal link between the subsidised imports, from India and the injury suffered by the Union industry during the IP.

6.3.2. Imports from third countries

Country		2009	2010	2011	IP
The PRC	Volume (tonnes)	8 129	10 853	14 360	16 403
	<i>Index</i> (2009 = 100)	100	134	177	202
	Market share (%)	6,2 %	5,8 %	7,3 %	8,3 %
	<i>Index</i> (2009 = 100)	100	94	118	134
	Av. price	1 914	2 607	2 835	2 508
	<i>Index</i> (2009 = 100)	100	136	148	131
		2009	2010	2011	IP
Switzerland	Volume (tonnes)	8 094	10 700	9 187	9 115
	<i>Index</i> (2009 = 100)	100	132	113	113
	Market share (%)	6,2 %	5,7 %	4,7 %	4,6 %
	<i>Index</i> (2009 = 100)	100	93	75	75
	Av. price	3 423	4 063	4 475	4 360
	<i>Index</i> (2009 = 100)	100	119	131	127
The Republic of Korea	Volume (tonnes)	4 900	6 775	6 355	6 266
	<i>Index</i> (2009 = 100)	100	138	130	128
	Market share (%)	3,7 %	3,6 %	3,2 %	3,2 %
	<i>Index</i> (2009 = 100)	100	97	87	85
	Av. price	3 717	4 165	4 761	4 627
	<i>Index</i> (2009 = 100)	100	112	128	124
Total of all third countries except India	Volume (tonnes)	25 793	33 586	35 749	37 712
	<i>Index</i> (2009 = 100)	100	130	139	146
	Market share (%)	19,6 %	17,9 %	18,2 %	19,1 %
	<i>Index</i> (2009 = 100)	100	91	93	97
	Av. price	3 609	4 214	4 748	4 483
	<i>Index</i> (2009 = 100)	100	117	132	124

(166) Apart from the subsidised imports from India that constituted 35 % of all imports into the Union market during the IP, there were other sources of imports, including the People's Republic of China, Korea and Switzerland, that had to be examined in the context of the causal link.

(167) The investigation showed that the average sales prices of Korean and Swiss exporting producers remained above the sales prices of the Indian exporting producers and those of the Union industry during the period considered and in particular during the IP. Moreover, their market share decreased by 0,5 and 1,6 percentage points respectively during the IP.

(168) The average price from the People's Republic of China was below the price level of the Union industry and that country's market share showed an increasing trend during the period considered. However, the investigation showed that the product mix represented by the Chinese imports is different and that Chinese products are not in direct competition with the ones of the Union industry or those of Indian origin in the Union market. It was therefore considered that the Chinese exports could not have had a significant impact on the core product types sold by the Union industry in the Union market. Hence, any effect the imports from China may have had on the injury suffered by the Union industry was minimal.

(169) Nevertheless, an exporting producer claimed that imports of stainless steel wires from the People's Republic of China, the Republic of Korea and Switzerland should have been included in the scope of this investigation.

(170) In addition to the facts and considerations given above, it should be noted that, at initiation stage and up to now, there is no evidence of subsidisation, injury and or causal link which would have justified the initiation of an anti-subsidy proceeding concerning imports originating in the abovementioned countries. Moreover, even if there would be evidence to justify investigating other imports, a difference in treatment which consists of opening an anti-subsidy proceeding against Indian imports only would not qualify as discriminatory. The claim that these countries should have been included in the scope of the investigation is therefore not founded and should be rejected.

(171) On the basis of above, it is concluded that exports from third countries did not contribute significantly to the injury suffered by the Union industry.

6.3.3. Export performance of the Union industry

(172) The total exports of the product concerned by the Union industry represented 8,5 % of total production in the IP. This picture is mirrored by exports to unrelated customers by the sampled Union producers whose exports represented 7 % of production in the IP and prices were 36 % higher than the one in the EU

market in the same period. Based on this, it can be concluded that the export activity of the Union industry could not be a potential cause of material injury.

6.3.4. The economic crisis and prices of raw materials

(173) As mentioned in recital (120) above, consumption in 2009 was particularly low due to the exceptional high price level of nickel and the effects of the economic crisis. This situation certainly explains the particularly bad financial state of the Union industry in 2009. However, it is noteworthy that in the situation of growing consumption from 2010 onwards the performances of the low-priced subsidised imports contrast with that of the Union industry.

(174) The investigation showed that even during the general economic recovery, the Union industry was unable to benefit from the growing consumption and was losing market share throughout the period considered, whereas the subsidised Indian exports gained more market share.

(175) Therefore, although the economic crisis and the increase in the prices of the raw materials may have contributed to the Union industry's poor performance, overall, it cannot be considered to have an impact such as to break the causal link between the subsidised imports and the material injury that the Union industry suffered during the IP.

6.4. Conclusion on causation

(176) It has been demonstrated that there was a substantial increase in the volume and market share of the subsidised imports originating in India in the period considered (by 110 % and by 40 % respectively). In addition, it was found that these imports were constantly undercutting the prices charged by the Union industry on the Union market and in particular during the IP (on average by 12,5 %).

(177) This increase in volume and market share of the subsidised imports from India coincided with the slow development of the financial situation of the Union industry in particular as of 2010. Thus, despite the recovery in consumption, the Union industry was unable to pass on the increase in cost of production to its customer to a satisfactory level and consequently financial indicators such as profitability, cash flow and investment remained at low levels.

(178) The examination of the other known factors which could have caused injury to the Union industry revealed that these factors were not such as to break the causal link established between the subsidised imports from India and the injury suffered by the Union industry.

(179) Based on the above analysis, which had distinguished and separated the effects of all known factors on the situation of the Union in industry from the injurious effects of the

subsidised exports, it is provisionally concluded that the subsidised imports from India have caused material injury to the Union industry within the meaning of Article 8(5) of the basic Regulation.

7. UNION INTEREST

7.1. General considerations

- (180) In accordance with Article 31 of the basic Regulation it has been examined whether, despite the provisional finding of injurious subsidisation, compelling reasons exist for concluding that it is not in the Union interest to adopt measures in this particular case. The analysis of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, and users.

7.2. Interest of the Union industry

- (181) The Union industry is composed of 27 known producers representing all of the Union production of the like product. The producers are located in different Member States of the Union, employing directly 1 747 people in relation to the like product during the IP.
- (182) One Union producer, representing a relatively small share of the Union production and having a related company in India opposed the initiation of the investigation. As mentioned in recital (22), it also argued that the highly technical products should not be covered and that it was not in the Union interest to impose the same measures on this product type.
- (183) As mentioned in recital (126) this concern was addressed in the questionnaire by enlarging the PCNs which clearly identified these types in the investigation. However, at this stage, the investigation revealed that highly technical products were covered by the investigation and that Indian exporting producers only exported limited quantities of these product types. Hence, the concerns expressed by this producer were not considered to be founded and its claim were rejected.
- (184) It has been established that the Union industry suffered material injury caused by the subsidised imports from India. It is recalled that the Union industry could not fully benefit from the growing consumption and the financial situation of the Union industry remained fragile.
- (185) It is expected that the imposition of countervailing duties will restore fair trade conditions on the Union market, allowing the Union industry to align its prices of the like product to the costs of production.
- (186) It can also be expected that the imposition of measures will enable the Union industry to regain at least part of the market share lost during the period considered, with a positive impact on its profitability and overall financial

situation. The imposition of measures would enable the industry to maintain and further develop its efforts to be cost efficient.

- (187) Should measures not be imposed, further losses in market share could be expected and the Union industry's profitability would deteriorate.

- (188) It is, therefore, provisionally concluded that the imposition of anti-subsidy measures on imports originating in India would be in the interest of the Union industry.

7.3. Interest of users

- (189) Questionnaires were sent to nine users in the Union. Only three replied to the questionnaires representing around 6 % of total imports from India of the product concerned during the IP. They are present in sectors regarding food processing including commercial kitchens and catering, home appliances, automotive industry.
- (190) On average, purchases from India constituted around 67 % of their total purchases of the product concerned, and India represented the exclusive source of supply only for one user. During the IP, the average percentage of the turnover incorporating the product concerned represented 54 % of their total turnover.
- (191) The investigation showed that, during the IP, the average profitability of all cooperating users in the sectors which use the product concerned was above 9 % on turnover.
- (192) The likely effect of the proposed measures was assessed on the basis of questionnaire replies received from the users and the total Union market for the product concerned and the like product. Assuming the worst case scenario for the Union market, i.e. that no price increase could be passed on to the distribution chain and that the users would continue purchasing from India in previous volumes, the impact of the duty on the users' profitability would mean a decrease of around 0.2 percentage points.
- (193) It has to be noted that one user had a neutral position regarding the investigation, because it considers that the imposition of measures will have no significant effect on the market prices as the potential price increase would be absorbed by the distributors.
- (194) Another user expressed concerns that, if imposed, measures would hit also certain product types that are no longer produced in the Union. The investigation showed, however that the product types referred to by the said user are still produced in the Union and that the demand of those types of stainless steel grades is not significant. Moreover, it should be noted that the Union producers did not produce at full capacity during the period considered, and therefore if demand increases the production could follow accordingly.

- (195) It should be pointed out that since the product concerned is standardised in terms of sector and use, users could easily change their sources of supply as far as the product quality, or price is concerned. The imposition of measures should not preclude the possibility for importing the product concerned from other countries and even from India once trade distorting effects due to subsidization have been removed.
- (196) Taken the above into consideration, even if certain users are likely to be impacted more negatively than others by the measures on Indian imports, the overall impact on users is considered limited.

7.4. Interest of importers

- (197) Limited cooperation was obtained from unrelated importers. Nine importers provided sampling information, but only one cooperated. This company accounted for around 7 % of total imports from India during the IP. The company opposes the imposition of measures since India is by far its most important supplier. Although the imposition of measures would have a negative impact on its profitability due to the higher costs to be incurred, the importing company should be in a position to pass on at least part of the increased cost to its customers.
- (198) Furthermore, importers could shift to other sources including the Union industry and other exporting countries.
- (199) On this basis, it is provisionally concluded that the imposition of countervailing measures will not have substantially negative effects on the interest of importers.

7.5. Conclusion on Union interest

- (200) In view of the above, it is provisionally concluded that overall, based on the information concerning the Union interest, there are no compelling reasons against the imposition of measures on imports of the product concerned from India.
- (201) Moreover, when considering the overall impact of the anti-subsidy measures on the Union market, the positive effects, in particular on the Union industry, appear to outweigh the potential negative impacts on the other more limited interest groups.

8. PROPOSAL FOR PROVISIONAL COUNTERVAILING MEASURES

- (202) In view of the conclusions reached with regard to subsidisation, injury, causation and Union interest, provisional countervailing measures should be imposed in order to prevent further injury being caused to the Union industry by the subsidised imports.

8.1. Injury elimination level

- (203) For the purpose of determining the level of these measures, account was taken of the subsidy margins

found and the amount of duty necessary to eliminate the injury suffered by the Union industry.

- (204) When calculating the amount of duty necessary to remove the effects of the injurious subsidisation, it was considered that any measure should allow the Union industry to cover its costs of production and obtain a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of subsidised imports, on sales of the like product in the Union.
- (205) Therefore, the injury elimination level was calculated on the basis of a comparison of the weighted average price of the subsidised imports, as established for the price undercutting calculations in recital (130) above, and the non-injurious price of the Union industry for the like product. The non-injurious price was established by adding to the cost of production a reasonable profit level. The target profit margin was provisionally set at 5 % as stated in recital (148).
- (206) Any difference resulting from this comparison was then expressed as a percentage of the average total CIF import price see recital (208).

8.2. Provisional measures

- (207) In the light of the foregoing, it is considered that, in accordance with Article 12(1) of the basic Regulation, provisional countervailing measures should be imposed in respect of imports originating in India at the level of the lower of the subsidy and injury margins, in accordance with the lesser duty rule.
- (208) On the basis of the above, the countervailing duty rates have been established by comparing the injury and subsidy margins. Consequently, the proposed provisional countervailing duty rates are as follows:

Company	Subsidy margin	Injury margin	Provisional countervailing duty rate
Rajaraatna Metal Industries	4,3 %	17,2 %	4,3 %
Venus group	3,1 %	26,1 %	3,1 %
Viraj Profiles Vpl. Ltd.	1,5 %	32,1 %	0,0 %
Cooperating non-sampled companies	3,8 %	20,4 %	3,8 %
All other companies	4,3 %	26,1 %	4,3 %

- (209) As concerns the parallel anti-dumping investigation, pursuant to Article 24(1), second subparagraph of the basic Regulation and Article 14(1) of Council regulation

(EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with the one and the same situation arising from dumping and from export subsidisation. As concerns the subsidy schemes, as stated under recitals (29) to (112), all schemes refer to export subsidisation. The relevant provisional anti-dumping duty rates of the cooperating producers concerned will be adjusted accordingly in the parallel anti-dumping investigation.

(210) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates (as opposed to the country-wide duty rate applicable to 'all other companies') are thus exclusively applicable to imports of the product concerned originating in India and produced by the companies and thus by the specific legal entities mentioned. Imported product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(211) Any claim requesting the application of these individual company countervailing duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽²⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.

(212) In order to ensure a proper enforcement of the anti-subsidy duty, the residual duty level should not only apply to the non-cooperating exporting producers but also to those producers which did not have any exports to the Union during the IP.

9. FINAL PROVISION

(213) In the interests of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of countervailing duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive findings,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing duty is hereby imposed on imports of wire of stainless steel containing by weight:

- 2,5 % or more of nickel, other than wire containing by weight 28 % or more but not more than 31 % of nickel and 20 % or more but not more than 22 % of chromium,
- less than 2,5 % of nickel, other than wire containing by weight 13 % or more but not more than 25 % of chromium and 3,5 % or more but not more than 6 % of aluminium,

currently falling within CN codes 7223 00 19 and 7223 00 99 and originating in India.

2. The rates of the provisional countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies below shall be:

Company	Duty (%)	TARIC additional code
Raajratna Metal Industries, Ahmedabad, Gujarat	4,3	B775
Venus Wire Industries Pvt. Ltd, Mumbai, Maharashtra	3,1	B776
Precision Metals, Mumbai, Maharashtra	3,1	B777
Hindustan Inox Ltd., Mumbai, Maharashtra	3,1	B778
Sieves Manufacturer India Pvt. Ltd., Mumbai, Maharashtra	3,1	B779
Viraj Profiles Vpl. Ltd., Thane, Maharashtra	0,0	B780
Companies listed in the Annex	3,8	B781
All other companies	4,3	B999

3. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Without prejudice to Article 30 of Council Regulation (EC) No 597/2009, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ European Commission, Directorate-General for Trade, Directorate H, N105, 8/20 1049 Brussels, Belgium.

2. Pursuant to Article 31(4) of Council Regulation (EC) No 597/2009, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of four months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 3 May 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX

Indian cooperating exporting producers not sampled*TARIC Additional Code B781*

Company name	City
Bekaert Mukand Wire Industries	Lonand, Tal. Khandala, Satara District, Maharashtra
Bhansali Bright Bars Pvt. Ltd.	Mumbai, Maharashtra
Bhansali Stainless Wire	Mumbai, Maharashtra
Chandan Steel	Mumbai, Maharashtra
Drawmet Wires	Bhiwadi, Rajasthan
Garg Inox Ltd	Bahadurgarh, Haryana
Jyoti Steel Industries Ltd.	Mumbai, Maharashtra
KEI Industries	New Delhi
Macro Bars and Wires	Mumbai, Maharashtra
Mukand Ltd.	Thane
Nevatia Steel & Alloys Pvt. Ltd.	Mumbai, Maharashtra
Panchmahal Steel Ltd.	Dist. Panchmahals, Gujarat