II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 861/2013

of 2 September 2013

imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India

THE COUNCIL OF THE EUROPEAN UNION,

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 15 thereof,

Having regard to the proposal submitted by the European Commission ('the Commission') after having consulted the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission imposed a provisional countervailing duty on imports of certain stainless steel wires originating in India by Regulation (EU) No 419/2013 [2] ('the provisional Regulation').

(2) The investigation 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 Union producers representing more than 50 % of total Union production of certain stainless steel wires.

(3) In the parallel anti-dumping investigation, the Commission imposed a provisional anti-dumping duty on imports of certain stainless steel wires originating in India by Regulation (EU) No 418/2013 [3].

1.2. Parties concerned by the investigation

(4) At the provisional stage of the investigation sampling was applied for the Indian exporting producers, the Union producers and unrelated importers. However, as two of the importers chosen for the sample did not return questionnaire replies, sampling for importers could no longer be pursued. All available information pertaining to cooperating importers was used to reach definitive findings, in particular as far the Union interest is concerned.

(5) Seven Indian exporting producers outside the sample requested individual examination. Two of them replied to the questionnaires. Five did not reply to the questionnaire. Out of the two which replied to the questionnaire, one withdrew its individual examination request. As a result, the Commission has examined the request of one Indian exporting producer outside the sample:

— KEI Industries Limited, New Delhi (KEI).

(6) Apart from the above, recitals 5, 6, 7, 8, 10, 11, 12 and 14 of the provisional Regulation are confirmed.

[1] OJ L 188, 18.7.2009, p. 93.

[2] 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 (OJ L 126, 8.5.2013, p. 19).

[3] Commission Regulation (EU) No 418/2013 of 3 May 2013 imposing a provisional anti-dumping duty on imports of certain stainless steel wires originating in India (OJ L 126, 8.5.2013, p. 1).

1.3. **Investigation period and the period considered**

(7) As set out in recital 20 of the provisional Regulation, the investigation of subsidisation and injury covered the period from 1 April 2011 to 31 March 2012 ('investigation period' or 'IP'). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2009 to 31 March 2012 ('period considered').

1.4. **Subsequent procedure**

(8) Following the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional countervailing measures ('provisional disclosure'), several interested parties, namely two exporting producers, the complainant, and 11 users, submitted comments. The parties who so requested were granted a hearing. The Commission continued to seek information it deemed necessary for the definitive findings. All comments received were considered and, where appropriate, taken into account.

(9) The Commission informed the interested parties of the essential facts and considerations on the basis of which it intended to recommend the imposition of a definitive countervailing duty on imports of certain stainless steel wires originating in India and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). The parties were also granted a period within which they could comment on the final disclosure. All comments received were considered and taken into account, where appropriate.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

(10) As stated in recital 21 of the provisional Regulation, the product concerned is defined as stainless steel wires containing by weight:

(i) 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,

(ii) 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, originating in India.

(11) Some users expressed concerns about the apparent lack of distinction between the various types of the product concerned and the like product because a wide product mix exists among all the product types. There was a particular concern as to how a fair comparison among all types could be ensured in the investigation. As is the case in most investigations, the definition of the product concerned covers a wide variety of product types which share the same or similar basic physical technical and chemical characteristics. The fact that these characteristics can vary from product type to product type may indeed lead, in an investigation, to covering a wide range of types. This is the case in the current investigation. The Commission took account of the differences among the product types and ensured a fair comparison. A unique product control number (PCN) was allocated to each product type, produced and sold by the Indian exporting producers and to each one produced and sold by the Union industry. The number depended on the main characteristics of the product, in this case, the steel grade, the tensile strength, the coating, the surface, diameter, and the shape. Therefore, the types of wires exported to the Union were compared on a PCN basis with the products produced and sold by the Union industry that have the same or similar characteristics. All these types fell within the definition of the product concerned and the like product in the notice of initiation [1] and in the provisional Regulation.

(12) One party reiterated its claim that the so called 'highly technical' product types are different and not interchangeable with other types of the product concerned. Hence, it argues, they should be excluded from the product definition. According to the case-law, when determining whether products are alike so that they form part of the same product, it needs to be assessed whether they share the same technical and physical characteristics, have the same basic end-uses, and have the same price-quality ratio. In that regard, the interchangeability of, and competition between, those products should also be assessed [2]. The investigation found that the 'highly technical' product types referred to by the party have the same basic physical, chemical, and technical characteristics as the other products subject to the investigation. They are made from stainless steel and they are wires. They constitute a semi-finished steel product (which in the majority of cases is then subject to further transformation in view of producing a broad variety of finished goods), and the production process is similar, using similar machines, such that producers can switch between different variants of the product, according to demand. Therefore, although different types of wires are not directly interchangeable and do not directly compete, producers are competing for contracts covering a broad range of stainless steel wires. Moreover, these product types are produced and sold by both the Union industry and the Indian exporting producers using a similar production method. Therefore, the claim cannot be accepted.

[1] OJ C 240, 10.8.2012, p. 6.
[2] Case C-595/11 Steinel [2013] not yet reported, paragraph 44.

(13) In response to definitive disclosure one party claimed that the analysis carried out by the Commission in terms of establishing whether the so-called highly technical product types should be included in the investigation was insufficient. This argument is rejected. The investigation established that the highly technical product type fall within the product definition as stated in recital 12 above. The party wrongly assumes that all the criteria referred to in the case-law have to be met at the same time; this is incorrect. According to the case-law, the Commission enjoys a wide discretion when defining the product scope [1], and has to base this assessment on the set of criteria developed by the Court of Justice of the European Union. Often, as in the present case, some criteria may point in one direction and some in the other; in such a situation, the Commission needs to carry out a global assessment, as it has done in the present case. Therefore, this interested party erred in assuming that product types need to share all characteristics in order to fall the same product definition.

(14) Some users claimed that the so-called stainless steel wires 'series 200' should be excluded from the product scope. In particular, they alleged this type was hardly produced by the Union industry. However, this claim is unfounded. First, the fact that a certain product type is not produced by the Union industry is not a sufficient reason to exclude it from the scope of the investigation, where the production process is such that the Union producers could start producing the product type in question. Second, as for highly technical wires (see recital 12), it was found that these types of the product concerned have basic physical, chemical, and technical characteristics identical or similar to other types of the like product produced and sold by the Union industry. Therefore, the claim cannot be accepted.

(15) Alternatively, these users claimed that wire rod should be included in the definition of the product concerned. However, wire rod is the raw material used for the production of the product concerned but can also be used for the production of different products such as fasteners and nails. Therefore, contrary to the product under investigation, it does not constitute a finished steel product. Through the cold forming production process, the wire rod amongst other products can be transformed into the product concerned or a like product. On that basis, wire rod cannot be included in the product scope within the meaning of the basic Regulation.

(16) On the basis of the above, the definition of the product concerned and the like product in recitals 21 to 24 of the provisional Regulation are hereby confirmed.

[1] Case T-170/94 Shanghai Bicycle [1997] ECR II-1383, paragraph 64.

3. SUBSIDISATION

3.1. Introduction

(17) In recital 25 of the provisional Regulation, reference was made to the following schemes, which allegedly involve the granting of countervailing subsidies:

(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').

(18) The Union industry alleged that the Commission had failed to take into account a number of subsidy schemes, especially regional ones, and as a result believed that the subsidies found to be received by Indian producers were underestimated. The allegation is unfounded. The Commission investigated all of the national and local subsidy schemes contained in the complaint. However, the Commission found that during the IP the sampled exporting producers had received subsidies only with regard to the schemes listed in recital 14 above.

(19) The Union industry also argued that, since in the parallel anti-dumping investigation the data submitted by the sampled Indian producers were found unreliable and Article 18 of Council Regulation (EC) No 1225/2009 [2] was applied, the corresponding Article 28 of the basic Regulation should have equally been applied in the current investigation. However, Article 28 of the basic Regulation applies only if its conditions are met, which has not been the case with regard to the information provided by the sampled Indian producers. Therefore, the claim cannot be accepted.

(20) The investigation has shown that the DEPBS, the DDS and the AAS all form part of one subsidy mechanism, that is a duty drawback mechanism. India has used

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

various types of this mechanism over a long time, modifying the individual sub-mechanisms frequently. The investigation has shown that it is appropriate to analyse these sub-mechanisms together, as exporters typically have to choose between them (they are mutually exclusive), and in the event one of the sub-mechanisms is discontinued, switch to another one.

(21) In the absence of other comments, recitals 25 to 28 of the provisional Regulation are confirmed.

3.2. **Duty Entitlement Passbook Scheme ('DEPBS')**

(22) One of the sampled Indian exporting producers argued that the DEPBS should not be considered as a countervailing subsidy, since the purpose of the scheme is to offset customs duties on imports. It was furthermore alleged that for the product under investigation, there is no domestic production of inputs, so that it is a reasonable assumption that all imports have been taxed at 5 %, and that the cap established by the Government of India ('GOI') ensures that there is no over-compensation. As explained in recital 38 of the provisional Regulation, 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 point (i) of Annex 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 benefiting from DEPBS is under no obligation actually to consume the goods imported free of duty in its production process and the amount of credit is not calculated in relation to the actual value of the inputs used. 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.

The GOI has failed to establish a system which links the amount of duty exempted on the imported inputs with their consumption in the exported products. From their side, the companies benefitting from this scheme also did not have a mechanism in place to demonstrate that they did not receive any excess remission. In addition, regarding the non-existing of over-compensation in this specific case, the company failed to demonstrate that this was the case, it could for example have benefitted from compensation for other imported goods or it could have benefitted from compensation for imported inputs without having consumed it for the production of the product concerned. It also has to be noted that the statement that there is no domestic production of inputs is incorrect since at least one of the companies investigated produced this domestically while the other two investigated companies were purchasing from a domestic producer, and not from a domestic importing trader. Therefore, these arguments cannot be accepted.

(23) One party argued that in case of the sale of the DEPBS licence, the actual selling price was below the licence value and therefore the countervailing benefit was lower than the one provisionally established. However, the benefit under this scheme was calculated on the basis of the amount of credit granted in the licence regardless of whether the licence was used to offset customs duties on imports or whether the licence was actually sold. Any sale of a licence at a price less than its face value is a purely commercial decision which does not alter the amount of benefit received under this scheme. Therefore, this argument cannot be accepted.

(24) The GOI argued that the DEPBS has been withdrawn during the IP and therefore should not be countervailed. They furthermore argued that since the duty drawback is not a successor programme of DEPB, DEPB may not be countervailed. Indeed the DEPBS ceased to exist on 30 September 2011, during the IP. However, the subsidisation continued to exist. As an alternative to the DEPBS the exporters were found to receive benefits under AAS and especially DDS. As described in recitals 42 to 44 of the provisional Regulation, AAS and DDS were adjusted to organise a smooth transition from the DEPBS. In addition, the nature of the benefits under the three schemes, i.e. revenue foregone in the form of exemption from customs duties, is exactly the same. Companies have thus a choice which scheme to use for the offsetting of customs duties. Therefore, despite the fact that the DEPBS ceased to exist halfway through the IP, the subsidies granted by the GOI during the IP should be countervailed because the overarching system of benefits continued as, for the reasons set out above in recital 20, all duty drawback schemes form one subsidy mechanisms with different, often changing sub-mechanisms. This argument can thus not be accepted.

(25) In its response to the definitive disclosure, the GOI reiterated its arguments concerning the withdrawal of the DEPBS after definitive disclosure. However, since no new arguments were presented which would lead to a change in the conclusion with regard to the replacement of the subsidisation under the ceased DEPBS by the adjusted DDS, this argument cannot be accepted.

(26) In the absence of other comments, recitals 29 to 47 of the provisional Regulation are confirmed.

(27) In addition, it was found that the Indian exporting producer KEI was using the DEPBS in the IP. The subsidy rate amounted to 0,50 %.

3.3. **Duty Drawback Scheme ('DDS')**

(28) The GOI argued that the DDS should not be considered as a countervailing subsidy, since the purpose of the scheme is to offset import duties and excises taxes paid on inputs. As explained in recitals 58 to 60 of the provisional Regulation 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 point (i) of Annex I, Annex II and Annex III of the basic Regulation. In particular, 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. Furthermore, an exporter is eligible for the DDS benefits regardless of whether it imports any input materials at all. To obtain the benefit, it is sufficient for an exporter simply to export goods without demonstrating that any input material was imported. The above was confirmed by the findings made at the visited companies and by the corresponding legislation, namely the GOI's circular No 24/2001 as explained in recital 60 of the provisional Regulation. In addition, in its submission, the GOI admitted itself in paragraph 32 thereof that DDS may result in excess remission. Therefore, the GOI's argument cannot be accepted.

(29) The GOI further argued that, although the verification system for the consumption of inputs was not complete, in particular due to the high number of beneficiaries and the administrative burden involved in controlling all of them, the verification mechanism in place based on sampling should be accepted. This argument however cannot be accepted as it is not foreseen in Article 3(1)(a)(ii), point (i) of Annex I, Annex II or Annex III of the basic Regulation.

(30) In the absence of other comments, recitals 48 to 64 of the provisional Regulation are confirmed.

(31) In addition, it was found that the Indian exporting producer, KEI Industries, was using the DDS in the IP. The subsidy rate amounted to 0,29 %.

3.4. **Advance Authorisation Scheme ('AAS')**

(32) One of the sampled Indian exporting producers argued that the AAS should be considered as a duty drawback system, because the imported materials are used to produce exported goods. As explained in recital 76 of the provisional Regulation the sub-scheme used in the present case is not 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 rules laid down in point (i) of Annex I, Annex II or Annex III 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). Moreover, the Standard Input Output Norms ('SIONs') for the product concerned were not sufficiently precise and they cannot constitute a verification system of actual consumption. The design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the production of the exported products. In addition, the GOI did not carry out any further examination based on actual inputs involved as explained in recital 73 of the provisional Regulation, 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). The sub-scheme is therefore countervailing, and the argument is rejected.

(33) In the absence of other comments, recitals 65 to 80 of the provisional Regulation are confirmed.

(34) The Indian exporting producer, KEI Industries, was found not to use AAS in the IP.

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

(35) Upon the definitive disclosure, one of the Indian exporting producers provided comments on a calculation error. This comment was partially warranted and was acknowledged in the calculation of the subsidy amount. Since the overall subsidy margin for this company was below the *de minimis* level even before this correction, the adjustment neither changes the final level of the countervailing duty of this company nor does it affect the average subsidy margin calculated for the cooperating non-sampled companies or the country-wide subsidy margin.

(36) Apart from the above, recitals 81 to 91 of the provisional Regulation are confirmed.

(37) The Indian exporting producer, KEI Industries, was found not to benefit from the EPCGS in the IP with regard to the product concerned.

3.6. **Export Credit Scheme ('ECS')**

(38) The GOI argued that in recital 92 of the provisional Regulation the Commission incorrectly cited the legal basis of the ECS. The GOI indicated that the Master

Circular DBOD No DIR(Exp.) BC 01/04.02.02/2007-2008 ('MC 07-08') and Master Circular DBOD No DIR(Exp.) BC 09/04.02.02/2008-09 ('MC 08-09') were updated and these were Master Circular DBOD No DIR(Exp.) BC 06/04.02.002/2010-11 ('MC 10-11') and Master Circular DBOD No DIR(Exp.) BC 04/04.02.002/2011-2012 ('MC 11-12) which constituted the legal basis for the ECS in the IP. Indeed the observation of the GOI is correct in this regard.

(39) The GOI further argued that, had the proper updated legal basis been taken into account, the Commission would have to take a note of the fact that the maximum ceiling interest rate applicable to export credits, previously made mandatory by the Reserve Bank of India ('RBI') for the commercial banks, ceased to exist before the IP with regard to export credits in rupees. Therefore, this scheme as far as credits in rupees are concerned can no longer be considered a subsidy. The investigation demonstrated that two sampled companies benefited in practice from export credits from privately owned banks with rates below the reference rate set by the Bank of India. The investigation has not revealed a commercial rational as to why these privately owned banks provide credits at discounted and apparently loss-making rates. These lending practices of the banks could suggest that there is still government involvement. However, the investigation did not produce evidence of the level required under WTO rules to show continuing entrustment or direction of the commercial banks. Therefore, the Commission has decided not to count the benefit of the discounted rates as a subsidy under this sub-scheme, in the absence of sufficient evidence of direction and/or a financial contribution by the GOI.

(40) Last, the GOI argued that the latest update of Master Circular — DBOD No DIR(Exp.) BC. 06/04.02.002/2012-13 ('MC 12-13'), which had entered into force two months after the end of the IP, had erased the maximum ceilings on interest rates of the export credits also with regard to credits in the foreign currency. Invoking Article 15(1) of the basic anti-subsidy Regulation the GOI argues that in such a case also this element of the export credit scheme should not be countervailed, because government direction of the banks has been removed. Although in the submitted MC 12-13 there is a provision which makes it free for the commercial banks to determine the interest rates on export credits in foreign currency with effect from May 2012 as claimed by the GOI, such a change of instruction of RBI to the private banks during the investigation would by itself be insufficient to exclude this scheme, since government direction may continue in an informal manner which would have to be the subject of further investigation. However, in view of the above conclusion on the sub-scheme concerning export credits in rupees, the Commission has decided not to countervail this sub-scheme concerning credits in foreign currency at this stage.

(41) In light of the above, the duty rates will be adjusted where applicable.

3.7. **Focus Market Scheme ('FMS')**

(42) Upon the definitive disclosure, the GOI submitted comments on FMS. The GOI argued that the scheme is geographically related to countries not part of the Union and can thus not be countervailed by the Union. Nevertheless, the GOI was not able to dispute either the practical implementations of the scheme or that the FMS benefit can be used for the product concerned, namely the fact that duty credits under FMS are freely transferable and that they can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods. Therefore, this claim had to be rejected as the investigation has shown that the product concerned can and does benefit from this scheme when exported to the Union.

(43) In the absence of any other comments, recitals 101 to 111 of the provisional Regulation are confirmed.

(44) The Indian exporting producer, KEI Industries, was found not to use FMS in the IP.

3.8. **Export Oriented Units Scheme ('EOUS')**

(45) Upon the definitive disclosure, the sole exporting producer investigated using EOUS submitted comments on this scheme. The company claimed that the Commission should use a different method to calculate the benefit received under the EOUS. The company argued that certain benefits under EOUS should be treated as a permissible duty drawback scheme within the meaning of Annexes II and III of the basic Regulation and that they therefore should not be countervailing.

(46) It was however found that regardless of which method of calculation used, the subsidy rate for this scheme would not exceed 0,95 %, meaning that the overall subsidy margin for this company would remain below *de minimis* level. Therefore it was not deemed necessary to analyse this claim further in the context of this investigation.

(47) In the absence of any other comments, recital 112 of the provisional Regulation is confirmed.

(48) The Indian exporting producer, KEI Industries, was found not to benefit the EOUS in the IP.

3.9. **Amount of countervailing subsidies**

(49) Following the decision not to count the benefits under the ESC as a subsidy as described in recitals 38 to 41 and correction of EPCGS benefit calculation for one of the companies as described in recital 35, the duty rates have been adjusted where applicable. The definitive amounts of countervailing subsidies established in accordance with the provisions of the basic Regulation, expressed *ad valorem*, now range from 0,79 % to 3,72 %.

Scheme	Company	Raajratna	Venus Group	Viraj	KEI
DEPBS (*)		0,58 %	0,93 %, 1,04 %, 1,32 %, 2,04 %	—	0,50 %
DDS (*)		0,61 %	1,14 %, 1,77 %, 1,68 %, 1,91 %	—	0,29 %
AAS (*)		2,43 %	0,15 %, 0 %, 0 %, 0 %	—	—
EPCGS (*)		0,09 %	0,02 %, 0 %, 0 %, 0 %	0,03 %	—
ECS (*)		—	—	—	—
FMS (*)		—	0,13 %, 0,71 %, 0,07 %, 0 %	—	—
EOU (*)		—	—	0,95 %	—
	TOTAL	3,72 %	3,03 % (**)	0,98 % (***)	0,79 % (***)

(*) Subsidies marked with an asterisk are export subsidies.
(**) Total subsidy margin on the basis of consolidated calculation for the Group.
(***) *de minimis*.

(50) The recalculated subsidy margin for the cooperating companies not included in the sample is 3,41 %.

(51) The recalculated country-wide subsidy margin is 3,72 %.

4. UNION INDUSTRY

4.1. **Union industry**

(52) Some users questioned the number of Union producers as stated in recital 116 of the provisional Regulation. They claim that number of producers was wrongly assessed and in reality there are fewer producers present on the Union market.

(53) The Commission points out that the above claim was not substantiated and confirms after verification the information given in recital 116 of the provisional Regulation, namely that 27 Union producers were manufacturing the product concerned in the Union during the IP. This is the number identified on the basis of the complaint, at standing phase and during the investigation. The Commission contacted all known Union producers and received data which was used in the context of the current investigation.

4.2. **Union production and Sampling of Union producers**

(54) In the absence of comments, recitals 117 to 119 of the provisional Regulation are confirmed.

5. INJURY

5.1. **Union consumption**

(55) Some users claimed that the injury analyses should have disregarded the data relating to 2009 because the financial crisis which occurred that year had distorting effects in particular on the Union consumption. However, even if 2009 was excluded from the analysis, there would still be a growing trend for consumption (+ 5 %) which is an indication of an improving market. Moreover, the negative effects of the financial crises are recognised in recital 120 of the provisional Regulation, but was concluded that the market situation improved. In absence of other comments, recital 120 of the provisional Regulation is confirmed.

5.2. **Imports into the Union from the country concerned**

(56) The subsidy margin established for KEI Industries is below the *de minimis* threshold foreseen in Article 14(5) of the basic Regulation (see recital 49 above). Therefore,

it is deemed that this exporting producer has not benefited from subsidy schemes within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation during the investigation period. As a result, its import volumes were excluded from the volume of subsidised imports from India. One exporting producer, namely the Venus group submitted that certain transactions were mistakenly double counted. The Commission agreed with the exporting producer, therefore these transactions were removed from the total volume of subsidised imports from India. Accordingly, the volume, market share and the average price of the subsidised imports were revised.

(57) Volume and market share of the subsidised imports:

	2009	2010	2011	IP
Volume (MT)	11 620	20 038	25 326	24 415
Index (2009 = 100)	100	172	218	210
Market share	8,8 %	10,7 %	12,9 %	12,4 %
Index (2009 = 100)	100	121	146	140

Source: Eurostat and questionnaire replies.

(58) KEI Industries exported limited quantities of the product concerned during the IP and the transactions of the Venus group mentioned above also constituted limited quantities, therefore the deduction of these import volumes from the total volume of subsidised imports from India does not result in changes concerning in the trends as described in recitals 123 and 124 of the provisional Regulation. Thus these recitals of the provisional Regulation are confirmed.

(59) Average price of the subsidised imports:

	2009	2010	2011	IP
Average price (euro/MT)	2 419	2 856	3 311	3 259
Index (2009 = 100)	100	118	137	135

Source: Eurostat and questionnaire replies.

(60) As explained above, K.E.I Industries exported limited quantities during the IP and the removal of certain transactions of the Venus group affected only limited quantities. The exclusion of KEI Industries import volumes and the above mentioned transactions of the Venus group from the total volume of subsidised imports from India does therefore not result in any significant change in the average price of the subsidised Indian imports or in the undercutting calculations. The recalculated undercutting margin is 11,7 %. For the rest, the conclusions drawn from the findings described in recitals 128 to 130 of the provisional Regulation are confirmed.

(61) In response to the final disclosure, the GOI argued that the Commission had applied the pro rata reduction of subsidised imports only on the import volumes of cooperating exporting producers in order to take account of the *de minimis* findings KEI and the removal of certain mistakenly double counted transactions of the Venus group. This claim is based on a misunderstanding. The Commission has applied the pro rata reduction to the entire import volume, including non-cooperating importers. The claim therefore has to be rejected.

5.3. **Economic Situation of the Union industry**

(62) Some parties claimed that the results obtained by the Union industry should be considered as reasonably positive in the context of the global economic crisis and that, with the exception of one injury indicator namely, market share, none of the other indicators pointed to the existence of injury.

(63) One party claimed that the average selling prices of the Union industry increased by around 34 % far more than its cost of production which increased by 13 % over the same period. In this respect it needs to be noted that, at the beginning of the period considered, namely in 2009, the Union industry was selling below cost of production, and only managed to sell above cost of production from 2011 onwards.

(64) The investigation showed that, although some injury indicators such as production volumes and capacity utilisation followed a positive trend, or remained stable such as employment, a number of other indicators relating to the financial situation of the Union industry, namely profitability, cash flow, investment and return on investment did not follow a satisfactory trend during the period considered. While the indicator relating to investments improved in 2010, it dropped below 2009 figures in 2011 and the IP. Although it is true that return on investments improved from 2009 until 2011 reaching 6,7 %, it dropped again to 0,8 % in the IP. Similarly indicators relating to profitability and cash flow improved until 2011 though they started again to deteriorate in the IP. Therefore, it can be concluded that the Union industry started to improve after 2009, but its recovery was slowed down by the subsidised imports from India subsequently.

(65) On a request by an interested party it is confirmed that the stock levels established in recital 153 of the provisional Regulation concerned the activity of the sampled Union companies.

(66) The Union industry argued that the target profit margin of 5 % set at the provisional stage was too low. The party did not substantiate its claim sufficiently. Recital 148 of the provisional Regulation explains the reasons behind the choice of this profit margin and the investigation did not reveal any other reasons to change it. Therefore, the target profit of 5 % is maintained for the purpose of the definitive findings.

(67) One exporting producer argued that the Union industry's difficulties are largely due to structural problems. Therefore, the target profit margin of 5 % was also unrealistic.

(68) It is recalled that according to the case-law [1], the Institutions need to establish the profit margin which the Community industry could reasonably count on under normal conditions of competition, in the absence of the subsidised imports. In the present case, it has proven impossible to carry out this analysis for the Union industry of the product concerned for the following reasons. Sufficient information to calculate profit margins for the product concerned is only available as of the year 2007. In 2007, the profit margin was 3,7 %; as of 2008, due to the financial and economic crisis, it became negative. The complaint argued, and the investigation established, that subsidised imports started to arrive on the Union market as of 2007, when the volume of imports increased from 17 727 tonnes in 2006 to 24 811,3 tonnes. Therefore, the Institutions have established the target profit margins on the basis of the real profits observed in other parts of the steel industry, which have not suffered from dumped and subsidised imports [2].

5.4. **Conclusion on injury**

(69) The Commission therefore concludes that the Union industry has suffered material injury during the IP.

6. **CAUSATION**

6.1. **Effect of subsidised imports**

(70) One exporting producer claimed that the provisional Regulation ignored that the Union industry was able to benefit from the increase in consumption since 2009 and that the Commission cannot assume that the Union industry will be able to maintain its market share indefinitely.

(71) In response to these arguments it needs to be noted that the investigation revealed the market share of the subsidised Indian import grew with a higher pace than the consumption in the Union market. The volume of Indian subsidised imports increased by 110 % while consumption increased by 50 % over the same period. Furthermore the investigation also showed that the average Indian price was constantly below the average price of the Union industry during the same period and undercut the Union industry average price by 11,7 % during the IP. As a result, while the Union industry indeed benefited from the increased consumption to a certain extent and it also could increase its sales volumes by 40 %, it could not maintain its market share as it could be expected under improving market conditions and given the Union industry's free production capacity.

6.2. **Effect of other factors**

6.2.1. *Non-subsidised imports*

(72) Some interested parties claimed that the effect of the non-subsidised import needed to be reassessed in light of the fact that KEI Industries received a *de minimis* subsidy margin and the fact that, due to double counting errors, certain transactions of the Venus group were removed from the analysis. They also argued that the prices of the non-subsidised imports were lower than the prices of the subsidised imports.

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

	2009	2010	2011	IP
Volume (MT)	5 227	9 015	11 394	10 938
Volume (*Index*)	100	172	218	210
Average price (*EUR/mt*)	2 268	2 678	3 105	3 056
Average price (*Index*)	100	118	137	135

Source: Questionnaire replies and Eurostat.

(74) It is therefore correct that prices of non-subsidised imports were lower than prices of subsidised imports. However, the volume of non-subsidised imports is only a third of the volume of subsidised imports. Therefore,

[1] Case T-210/95 European Fertilizer Manufacturer's Association (EFMA) v Council [1999] ECR II-3291, paragraph 60.

[2] Council Regulation (EU) No 383/2009 of 5 May 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pre- and post-stressing wires and wire strands of non-alloy steel (PSC wires and strands) originating in the People's Republic of China (OJ L 118, 13.5.2009, p. 1); Commission Regulation (EU) No 1071/2012 of 14 November 2012 imposing a provisional anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand (OJ L 318, 15.11.2012, p. 10); Commission Regulation (EU) No 845/2012 of 18 September 2012 imposing provisional anti-dumping duty on imports of certain organic coated steel products originating in the People's Republic of China (OJ L 252, 19.9.2012, p. 33).

the injury caused by non-subsidised imports does not break the causal link between the subsidised imports, from India and the material injury suffered by the Union industry during the IP.

6.2.2. *Imports from third countries*

(75) One Indian exporting producer and the GOI reiterated the claim that the People's Republic of China should have been included in the investigation and that the impact the imports from the People's Republic of China had on the Union market and the Union industry was underestimated.

(76) As mentioned in recital 170 of the provisional Regulation, neither at initiation stage nor at definitive stage is there any evidence of subsidisation that may have justified the initiation of an anti-subsidy investigation on imports originating in People's Republic of China. The claim that People's Republic of China should have been included in the scope of the investigation is therefore not founded and is rejected.

(77) However, the imports from the People's Republic of China showed an increasing trend during the period considered and reached a market share of 8,3 % in the IP as stated in recital 168 of the provisional Regulation. In addition, the Chinese import prices were lower than the prices of the Union industry and those of the Indian exporting producers in the Union market. It was, therefore, further investigated whether the imports from People's Republic of China could have contributed to the injury suffered by the Union industry and broken the causal link between that injury and the Indian subsidised imports.

(78) The information available at the provisional stage suggested that the product mix represented by the Chinese imports was different, and that the ranges where the Chinese products were present were different, compared to the products sold by the Union industry or even those of Indian origin products sold in the Union market.

(79) After publication of the provisional measure the Commission received several claims pointing to the possibility that Chinese low-priced imports during the IP would break the causal link between dumped Indian imports and material injury suffered by the Union industry.

(80) Analysis made on the basis of the import statistics concerning the two CN codes under investigation showed that 29 % of Chinese imports were made on the lower end of the market (under CN code 7223 00 99). This partly explains why Chinese prices on average are lower than those of the Union industry and the Indian exporting producers. The statistics for CN code 7223 00 99 also showed that the customers of the Chinese producers were concentrated in the United Kingdom where the Union industry was basically not present.

Average price (euro/MT)	2009	2010	2011	IP
72 230 019	2 974	3 286	3 436	2 995
72 230 099	765	1 458	1 472	1 320

Source: Eurostat

(81) As concerns CN code 7223 00 19 the analyses carried out on a PCN basis showed that both the Union industry and Indian producers were mainly competing in the higher end of the market where prices could be up to four times higher than prices in the lower end within the same CN [1]. The investigation also showed that in general price variations are linked to the product type and the nickel content. Furthermore the investigation showed that Chinese exporters are predominantly selling the lower quality product types falling within the abovementioned CN code in the Union market. Therefore, the product mix becomes a predominant factor in evaluating the Chinese imports.

(82) As concerns the price level of imports from the People's Republic of China, it needs to be pointed out that from 2009 until the IP the average price of Chinese imports remained above the price of the subsidised Indian exporting producers' prices, as can be seen from the following table showing the average price of subsidised Indian exports falling under CN code 7223 00 19.

Average price (euro/MT)	2009	2010	2011	IP	IP + 1
73 320 019	2 974	3 286	3 436	2 995	3 093

Source: Eurostat.

(83) In the IP for the first time the average Chinese import price dropped below that of the Indian import price for subsidised imports. However, this observation was found to be of a temporary nature since the Chinese price level in the year after the IP increased and was again higher than the Indian prices.

(84) Furthermore, the comparison between the import volumes from India and the People's Republic of China showed that at any point during the period considered and particularly in the IP, imports from the People's Republic of China were at much lower levels than the imports from India. The import volumes for the People's Republic of China amounted to basically less than half of the total imports from India.

[1] However, it is noted that both the Union industry and the Indian exporting producers are also present in the lower end of the market even if to a lesser extent.

(85) On the basis of the above it is confirmed that significant proportion of the Chinese imports during the IP are different from the Union industry product mix and that any direct competition with the products produced and sold by the Union industry is limited.

(86) Therefore, the imports from the People's Republic of China could not have affected the situation of the Union industry to the extent to break the causal link between the subsidised imports from India and the injury suffered by the Union industry. Therefore, recital 168 of the provisional Regulation is confirmed.

6.2.3. *Competition from other producers in the Union*

(87) One party argued that the Union producers' poor financial performance might have been caused by competition from other Union producers which were not complainants or did not express their support for the investigation at the initiation of the case.

(88) The market share of other producers in the Union developed as follows:

	2009	2010	2011	IP
Volume (MT)	34 926	55 740	55 124	55 124
Index (2009 = 100)	100	160	158	158
Market share of other producers in the Union	26,6 %	29,8 %	28,1 %	27,9 %

Source: Complaint.

(89) The Union producers which were not complainants and which did not specifically express support to the investigation accounted for 44 % of total Union sales reported in recital 139 to the provisional Regulation. Their sales volume increased by 58 % from an estimated 34 926 tonnes in 2009 to 55 124 tonnes during the period considered. However, such growth is relatively modest if compared to the growth of the subsidised imports from India in the same period (+ 110 %). Furthermore, the market share of those Union producers remained relatively stable during the period considered and no indication was found that their prices were lower than those of the sampled Union producers. It is therefore concluded that their sales on the Union market did not contribute to the injury suffered by the Union industry.

6.3. **Conclusion on causation**

(90) In the absence of comments, recitals 176 to 179 of the provisional Regulation are confirmed.

7. UNION INTEREST

7.1. General considerations

(91) In the absence of comments, recital 180 of the provisional Regulation is confirmed.

7.2. Interest of the Union industry

(92) In the absence of comments, recitals 181 to 188 of the provisional Regulation are confirmed.

7.3. Interest of users

(93) Following the imposition of the provisional measures, seven users and one users' association contacted the Commission and showed interest to cooperate in the investigation. Following their request, questionnaires were sent to them in April 2013. However, only two users submitted a full questionnaire reply and overall the cooperating users represented 12 % of total imports from India during the IP and 2,5 % of the total Union consumption. The economic impact of the measures on users was reassessed on the basis of the new data available in the questionnaire replies and two users were visited to verify the information provided.

(94) Users claimed that the level of profitability of 9 %, stated in recital 191 of the provisional Regulation was too high and was not representative for the users' industry. Following the receipt of the additional questionnaire replies the average profitability of all cooperating users was recalculated and established at 2 % on turnover.

(95) It was also found that on average concerning the cooperating users, purchases from India constituted 44 % of the total purchases of the product concerned, and that India represented the exclusive source of supply for two cooperating users. During the IP, the turnover of the product incorporating the product concerned represented on average 14 % of turnover of the cooperating users.

(96) Assuming the worst case scenario for the Union market, i.e. that no potential 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 achieved from activities using or incorporating the product concerned would mean on average a decrease by 0,25 percentage points to 1,75 %.

(97) The Commission acknowledges that the impact will be more important, on an individual level, for those users which source their entire imports from India. However,

these are relatively few in number (two of the cooperating users). Furthermore, they have the possibility, provided that their Indian producer cooperates, to request the refund of the duties pursuant to Article 21 of the basic Regulation, if all conditions for such a refund are met.

(98) Some users reiterated the concern that measures would hit certain type of wires not produced in Europe, namely types included in the so-called series 200 as described in recital 194 of the provisional Regulation. According to the users, the absence of production in the Union is due to the limited demand and to the specificity of the production process.

(99) However, the investigation showed that such types of stainless steel wires are produced by the Union industry and that they represent a limited share of the Union market. There are also alternative sources of supply available for users from countries not subject to anti-dumping or anti-subsidy measures. In addition, two Indian exporting producers received 0 % countervailing duty rate, therefore the imposition of the measures will have no have significant effects on supplies from them. Furthermore, other product types of stainless steel wires can be used for the same purposes. Therefore, the imposition of the measures cannot have a significant impact on the Union market or on these users. This claim is therefore rejected.

(100) Some users pointed out the longer delivery time for the like product by the Union producers compared to the delivery time of the product concerned from India. However, the possibility for merchants and traders of stocking the products and of having them swiftly available does not undermine the factual evidence of the negative effects of the subsidised imports. Therefore, this argument has to be rejected.

(101) Taking the above into consideration, even if some users are likely to be negatively affected more than others by the measures on imports from India, it is considered that in balance the Union market will benefit from the imposition of the measures. In particular, it is considered that restoring fair trade conditions on the Union market would allow the Union industry to align its prices with cost of production; to keep production and employment; to regain the market share previously lost and to benefit from increased economies of scale. This should allow the industry to reach reasonable profit margins that will permit it to operate efficiently in the medium and long term. In parallel the industry will improve its overall financial situation. In addition, the investigation established that the measures will have an overall limited impact on the users and on unrelated importers. Therefore it is concluded that the overall benefit of the measures appears to outweigh the impact on the users of the product concerned in the Union market.

7.4. **Interest of unrelated importers**

(102) In the absence of comments, recitals 197 to 199 of the provisional Regulation are confirmed.

7.5. **Conclusion on Union interest**

(103) In view of the above, the assessment in recitals 200 and 201 of the provisional Regulation is confirmed.

8. **DEFINITIVE COUNTERVAILING MEASURES**

8.1. **Injury elimination level**

(104) In absence of any comments, recitals 203 to 206 of the provisional Regulation are confirmed.

8.2. **Conclusion on injury elimination level**

(105) No individual injury margin was calculated for KEI Industries since this company's definitive subsidy margin was at a *de minimis* level as stated in recital 49 above.

(106) The methodology used in the provisional Regulation is hereby confirmed.

8.3. **Definitive measures**

(107) In the light of the above and in accordance with Article 15(1) of the basic Regulation, a definitive countervailing duty should be imposed at a level sufficient to eliminate the injury caused by the subsidised imports without exceeding the subsidy margin found.

(108) Therefore, the countervailing duty rates were established by comparing the injury margins and the subsidy margins. Consequently, the proposed countervailing duty rates are as follows:

Company	Subsidy margin	Injury margin	Countervailing duty rate
Raajratna Metal Industries	3,7 %	17,2 %	3,7 %
Venus group	3,0 %	23,4 %	3,0 %
Viraj Profiles Vpl. Ltd	0,9 %	n/a	0,0 %
KEI Industries Limited	0,7 %	n/a	0,0 %
Cooperating non-sampled companies	3,4 %	19,3 %	3,4 %
All other companies	3,7 %	23,4 %	3,7 %

(109) The individual company countervailing duty rates specified in this working document were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are exclusively applicable to imports of products originating in India and produced by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this working document, 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'.

(110) Any claim requesting the application of an 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 [1] 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 imposing the definitive countervailing duties will be amended accordingly by updating the list of companies benefiting from individual duty rates.

8.4. **Definitive collection of provisional countervailing duties**

(111) In view of the magnitude of the subsidy margins found and in the light of the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of the provisional countervailing duty, imposed by the provisional Regulation be definitively collected to the extent of the amount of the definitive duties imposed.

HAS ADOPTED THIS REGULATION:

Article 1

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

(i) 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,

(ii) 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 rate of the definitive countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and manufactured by the companies below shall be:

Company	Duty (%)	TARIC additional code
Raajratna Metal Industries, Ahmedabad, Gujarat	3,7	B775
Venus Wire Industries Pvt. Ltd, Mumbai, Maharashtra	3,0	B776
Precision Metals, Mumbai, Maharashtra	3,0	B777
Hindustan Inox Ltd, Mumbai, Maharashtra	3,0	B778
Sieves Manufacturer India Pvt. Ltd, Mumbai, Maharashtra	3,0	B779
Viraj Profiles Vpl. Ltd, Thane, Maharashtra	0,0	B780
KEI Industries Limited, New Delhi	0,0	B925
Companies listed in the Annex	3,4	
All other companies	3,7	B999

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

Article 2

Amounts secured by way of provisional countervailing duties in accordance with Regulation (EU) No 419/2013 on imports of wire of stainless steel containing by weight:

(i) 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,

(ii) 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,

shall be definitively collected. The amounts secured in excess of the definitive rates of the countervailing duty shall be released.

[1] European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

Article 3

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

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

Done at Brussels, 2 September 2013.

For the Council
The President
L. LINKEVIČIUS

ANNEX

INDIAN COOPERATING EXPORTING PRODUCERS NOT SAMPLED

Company name	City	TARIC additional code
Bekaert Mukand Wire Industries	Lonand, Tal. Khandala, Satara District, Maharastra	B781
Bhansali Bright Bars Pvt. Ltd	Mumbai, Maharashtra	B781
Bhansali Stainless Wire	Mumbai, Maharashtra	B781
Chandan Steel	Mumbai, Maharashtra	B781
Drawmet Wires	Bhiwadi, Rajastan	B781
Garg Inox Ltd	Bahadurgarh, Haryana	B931
Jyoti Steel Industries Ltd	Mumbai, Maharashtra	B781
Macro Bars and Wires	Mumbai, Maharashtra	B932
Mukand Ltd	Thane	B781
Nevatia Steel & Alloys Pvt. Ltd	Mumbai, Maharashtra	B933
Panchmahal Steel Ltd	Dist. Panchmahals, Gujarat	B781