COUNCIL REGULATION (EC) No 2049/1999
of 27 September 1999
amending Regulation (EC) No 2450/98 imposing a definitive countervailing duty on imports of stainless steel bars originating in India and collecting definitively the provisional duty imposed

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1], and in particular Articles 15 and 20 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

(1) By Regulation (EC) No 2450/98 [2], the Council imposed a definitive countervailing duty on imports of stainless steel bars (hereinafter referred to as 'the product concerned') falling within CN codes 7222 20 11, 7222 20 21, 7222 20 31 and 7222 20 81 originating in India. The measures took the form of *ad valorem* duties of between 0 and 25,5 % with a residual duty of 25,5 %.

B. CURRENT PROCEDURE

1. Request for review

(2) Subsequent to the imposition of definitive measures, the Commission received a request for the initiation of an accelerated review of Regulation (EC) No 2450/98, pursuant to Article 20 of Regulation (EC) No 2026/97 (hereinafter referred to as 'the basic Regulation'), from two Indian producers, Sindia Steels Ltd and Meltroll Engineering Pvt. Ltd, both located in Bombay. The companies concerned claimed that they were not related to any other exporters of the product concerned in India. Furthermore, they claimed that they had not exported the product concerned to the Community during the original period of investigation (1 July 1996 to 30 June 1997), but had exported the product concerned to the Community since then.

Both companies requested the establishment of an individual rate of duty. In the case of Sindia Steels Ltd, this company had made itself known during the original investigation, but as it had not exported to the Community during the investigation period, it was allocated a weightedaverage countervailing duty of 22,1 %. Meltroll Engineering Pvt. Ltd has been subject to the residual 25,5 % countervailing duty.

2. Initiation of an accelerated review

(3) The Commission examined the evidence submitted by the two Indian exporting producers concerned and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 20 of the basic Regulation. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by a notice in the Official Journal [3], an accelerated review of Regulation (EC) No 2450/98 with regard to the companies concerned and commenced its investigation.

3. Product concerned

(4) The product covered by the current review is the same product as that under consideration in Regulation (EC) No 2450/98.

4. Parties concerned

(5) The Commission officially advised the two companies concerned and the Government of India. Furthermore, it gave other parties directly concerned the opportunity to make their views known in writing and to request a hearing. However, no such request was received by the Commission.

The Commission sent a questionnaire to the companies concerned and received full replies within the deadline. The Commission sought and verified all information it deemed necessary for the purpose of the investigation and carried out verification visits at the premises of the companies concerned.

5. Investigation period

(6) The investigation of subsidisation covered the period from 1 January 1998 to 31 December 1998 (hereinafter referred to as 'the investigation period').

6. Methodology

(7) The same methodology as that used in the original investigation was applied in the current investigation.

C. SCOPE OF THE REVIEW

(8) This review was limited to calculating the amount of subsidisation granted to Sindia Steels Ltd and Meltroll Engineering Pvt. Ltd.

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ L 304, 14.11.1998, p. 1.
[3] OJ C 19, 23.1.1999, p. 17.

(9) The Commission examined the same subsidy schemes which were analysed in the original investigation. It also examined whether the new exporters had used any subsidy schemes which were alleged in the original complaint but not used during the original investigation.

(10) It was finally examined whether the new exporters had made use of any subsidy schemes which were established after the end of the original investigation period, or had received ad hoc subsidies after this date.

D. RESULTS OF THE INVESTIGATION

1. New exporter qualification

(11) The investigation confirmed that the companies concerned had not exported the product concerned during the original period of investigation and that they had begun exporting to the Community after this period.

Furthermore, the companies concerned were able to demonstrate satisfactorily that they did not have any links, direct or indirect, with any of the Indian exporting producers subject to the countervailing measures in force with regard to the product concerned.

Accordingly, it is confirmed that the companies concerned should be considered as new exporters in accordance with Article 20 of the basic Regulation and thus individual amounts of subsidy should be determined for them. The fact that Sindia Steels is already subject to a weighted-average, rather than the residual, countervailing duty on the product concerned does not in any way prejudice its right to request a new exporter review, given that all the criteria set out in the said Article 20 are fulfilled.

2. Subsidisation

(12) On the basis of the information contained in the replies to the Commission's questionnaire, the following five schemes were investigated:

— passbook scheme,
— duty entitlement passbook scheme,
— export promotion capital goods scheme,
— export processing zones/export oriented units,
— income tax exemption scheme.

All these schemes had been found to be countervailable during the original investigation.

3. Passbook scheme (PBS)

(13) Neither of the companies concerned had availed themselves of the passbook scheme, which on 1 April 1997, i.e. during the original investigation period, was abolished and replaced by its successor, the duty entitlement passbook scheme (DEPB).

4. Duty entitlement passbook scheme (DEPB)

General

(14) It was established that the two companies concerned received benefits under this scheme. Both companies used the DEPB on a post-export basis.

Under this scheme, any eligible exporter can apply for credits which are calculated as a percentage of the value of exported finished products. Such DEPB rates have been established by the Indian authorities for most products, including the products concerned, on the basis of the standard input/output norms. A licence stating the amount of credit granted is issued automatically.

DEPB on post-export basis allows for the use of such credits for any subsequent imports (e.g. raw materials or capital goods) except for goods of which the import is restricted or prohibited. Such imported goods can be sold on the domestic market (subject to sales tax) or used otherwise.

DEPB credits are freely transferable. The DEPB licence is valid for a period of 12 months from the date of granting of the licence.

(15) The characteristics of the DEPB have not changed since the original investigation. The subsidy conferred by the relief from import duty is contingent on export performance, and it was therefore determined during the original investigation that it is specific and countervailable under Article 3(4)(a) of the basic Regulation.

Calculation of the subsidy amount

(16) It was established that neither of the companies used the licences to make duty-free imports. Instead the companies sold some of their licences, and the benefit was calculated on the basis of the amount of credit in the licence regardless of the sales price of the licence. The companies concerned claimed that the benefit should be limited to the effective sales price of the licence which is often less than the face value of the credits in the licence. However, in accordance with the provisional findings in the cases of stainless steel wire from India (Commission Regulations (EC) No 618/1999 [1] and (EC) No 619/1999 [2], this claim cannot be granted since the sale of a licence at a price less than the face value is a purely commercial decision which does not alter the countervailable benefit from this scheme.

[1] OJ L 79, 24.3.1999, p. 25.
[2] OJ L 79, 24.3.1999, p. 60.

(17) In order to establish the full benefit to the recipient under this scheme, this amount of credit has been adjusted by adding interest during the original investigation period. Since the benefits from import duty exemptions are obtained regularly during the investigation period, it was considered appropriate to follow the practice established in the original investigation and add interest covering a period of six months, equivalent to half of the annual commercial rate in India of 14,58 % found during the original investigation period, i.e. 7,29 %. This amount (i.e. unpaid customs duty plus interest) has been allocated over total exports during the investigation period.

Sindia Steels Ltd and Meltroll Engineering Pvt. Ltd benefited from this scheme during the investigation period and obtained subsidies of 11,7 % and 4,9 % respectively. Where the companies claimed deductions linked to the payment of fees for obtaining the DEPB licence, these were granted.

5. **Export promotion capital goods scheme (EPCGS)**

General

(18) It was established that Sindia Steels Ltd had availed itself of this scheme.

To benefit from the scheme, a company must provide to the relevant authorities details of the type and value of capital goods which are to be imported. Depending on the level of export commitment which the company is prepared to undertake, the company will be allowed to import capital goods at either a zero rate of duty or a reduced rate. A licence authorising the import at preferential rates is issued automatically.

In order to meet the export obligation, goods exported must have been produced using the imported capital goods.

An application fee is payable to obtain a licence.

(19) The characteristics of the EPCGS have not changed since the original investigation. It was determined during the original investigation that the EPCGS is a countervailable subsidy as the payment by an exporter of a reduced or zero rate of duty constitutes a financial contribution by the Government of India (GOI), revenue otherwise due is foregone and a benefit is conferred on the recipient by lowering the duties payable or fully exempting him from paying the import duties.

The subsidy is contingent in law on export performance within the meaning of Article 3(4)(a) of the basic Regulation, since it cannot be obtained without a commitment to export goods, and is therefore deemed to be specific and countervailable.

Calculation of the subsidy amount

(20) The benefit to the exporter has been calculated on the basis of the amount of unpaid customs duty due on imported capital goods by spreading this amount across a period which reflects the normal depreciation of such capital goods in the industry of the product concerned. This period has been established by using the weighted average (on the basis of production volume of the products concerned) of depreciation periods for capital goods actually imported under the EPCGS by Indian producers during the original investigation period, resulting in a normal depreciation period of 15,5 years. Since this subsidy is equivalent to a one-time grant, the amount so calculated which is attributable to the investigation period has been adjusted by adding the annual interest rate of 14,58 %. This amount has then been allocated over total exports during the investigation period.

(21) Sindia Steels Ltd obtained a benefit under this scheme of 0,3 %.

6. **Export processing zones (EPZ)/export oriented units (EOU)**

(22) The Commission established that none of the companies was located in an EPZ or was an EOU. There is therefore no need for the Commission to assess this scheme in the context of the investigation.

7. **Income tax exemption scheme (ITES)**

General

(23) It was established that Meltroll Engineering Pvt. Ltd had availed itself of this scheme.

To benefit from exemptions from paying tax, a company will make the relevant claim when submitting its tax return to the Tax Authorities at the end of the tax year. The tax year runs from 1 April to 31 March. The tax return must be submitted to the authorities by the following 30 November. The final assessment by the authorities can take up to three years after submitting the tax return.

Under Section 80HHC companies can claim 100 % exemption from taxable income for profits realised on export sales.

(24) The characteristics of the ITES have not changed since the original investigation. It was determined during the original investigation that the subsidy conferred by the relief from income tax is contingent on export performance within the meaning of Article 3(4)(a) of the basic Regulation, since it exempts profits from export sales only, and is therefore deemed to be specific and countervailable.

Calculation of the subsidy amount

(25) As stated in recital 23, claims for benefit under section 80HHC are made when submitting a tax return at the end of the tax year. As the tax year in India runs from 1 April to 31 March, it is considered appropriate to calculate the benefit under this scheme on the basis of the tax year 1997/98 (i.e. 1 April 1997 to 31 March 1998). The benefit to the exporters has therefore been calculated on the basis of the difference between the amount of taxes normally due with and without the benefit of the exemption. The rate of corporate tax applicable during this tax year was 35 %. In order to establish the full benefit to the recipient, this amount has been adjusted by adding interest during the investigation period. Given the nature of this subsidy, which is equivalent to a one-time grant, the commercial interest rate of 14,58 % was considered appropriate. The amount of benefit has been allocated over total exports during the tax year 1997/98.

Meltroll Engineering Pvt. Ltd obtained a benefit under this scheme of 0,6 %.

8. **Other schemes**

(26) It was established that the new exporters had neither made use of new subsidy schemes which were established after the end of the original investigation period, nor had received ad hoc subsidies after this date.

9. **Amount of countervailable subsidies**

(27) Taking account of the definitive findings relating to the various schemes as set out above, the amount of countervailable subsidies for each of the investigated exporting producers is as follows:

	DEPB	EPCGS	Income Tax	Total
Sindia Steels Ltd	11,7 %	0,3 %		12,0 %
Meltroll Engineering Pvt. Ltd	4,9 %		0,6 %	5,5 %

E. **AMENDMENT OF THE MEASURES BEING REVIEWED**

(28) Based on the findings made during the investigation, it is considered that imports into the Community of stainless steel bars produced and exported by the companies concerned should be subject to countervailing duties corresponding to individual amounts of subsidies established for these companies.

(29) Regulation (EC) No 2450/98 should therefore be amended accordingly.

F. **DISCLOSURE AND DURATION OF THE MEASURE**

(30) The companies concerned were informed of the facts and considerations on the basis of which it is intended to propose the amendment of Regulation (EC) No 2450/98, and were given the opportunity to comment.

(31) The review carried out does not affect the date on which Regulation (EC) No 2450/98 will expire pursuant to Article 18(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Regulation (EC) No 2450/98 is amended as follows:

(a) the duty rate for Sindia Steels Ltd (TARIC additional code: 8406) shall be 12 %;

(b) the following shall be added to the list of companies subject to measures:

'Manufacturer	Rate of duty (%)	TARIC additional code
— Meltroll Engineering Ltd, Mumbai	5,5	A021'

Article 2

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

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

Done at Brussels, 27 September 1999.

For the Council

The President

K. HEMILÄ