COUNCIL REGULATION (EC) No 1295/2004

of 12 July 2004

amending Regulation (EC) No 1599/1999 imposing a definitive countervailing duty on imports of stainless steel wire with a diameter of 1 mm or more originating in India

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] (the basic Regulation), and in particular Article 20 thereof,

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

Whereas:

A. PREVIOUS PROCEDURE

(1) The Council, by Regulation (EC) No 1599/1999 [2], imposed a definitive countervailing duty on imports of stainless steel wire having a diameter of 1 mm or more (the product concerned), falling within CN code ex 7223 00 19 and originating in India. The measures took the form of an *ad valorem* duty ranging between 0 % and 35,4 % for individual exporters, with a rate of 48,8 % for non-cooperating exporters.

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 1599/1999, pursuant to Article 20 of the basic Regulation, from one Indian producer, VSL Wires Limited (the applicant). The applicant claimed that it was not related to any other exporters of the product concerned in India. Furthermore, it claimed that it had not exported the product concerned during the original period of investigation (i.e. from 1 April 1997 to 31 March 1998), but had exported the product concerned to the Community after that period. On the basis of the above, it requested that an individual duty rate be established for it.

2. Initiation of an accelerated review

(3) The Commission examined the evidence submitted by the applicant 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 of the European Union* [3], an accelerated review of Regulation (EC) No 1599/1999 with regard to the company 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 1599/1999, namely stainless steel wire having a diameter of 1 mm or more, containing by weight 2,5 % or more of nickel, excluding wire containing by weight 28 % or more but no more than 31 % of nickel and 20 % or more but no more than 22 % of chromium.

4. Investigation period

(5) The investigation of subsidisation covered the period from 1 April 2002 to 31 March 2003 (the review investigation period).

5. Parties concerned

(6) The Commission officially advised the applicant and the Government of India (GOI) of the initiation of the procedure. Furthermore, it gave other parties directly concerned the opportunity to make their views known in writing and to request a hearing. However, no such views or any request for a hearing was received by the Commission.

(7) The Commission sent a questionnaire to the applicant and received a full reply within the required deadline. The Commission sought and verified all information it deemed necessary for the purpose of the investigation and carried out a verification visit at the premises of the applicant.

C. SCOPE OF THE REVIEW

(8) As no request for a review of the findings on injury was made in by the applicant, the review was limited to subsidisation.

[1] OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

[2] OJ L 189, 22.7.1999, p. 1. Regulation as amended by Regulation (EC) No 164/2002 (OJ L 30, 31.1.2002, p. 9).

[3] OJ C 161, 10.7.2003, p. 2.

(9) The Commission examined the same subsidy schemes which were analysed in the original investigation. It also examined whether the applicant had used any subsidy schemes which were alleged to confer benefits in the original complaint but not found to have been used during the original investigation.

It was finally examined whether the applicant 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

(10) The applicant was able to satisfactorily demonstrate that it was not related, directly or indirectly, to any of the Indian exporting producers subject to the countervailing measures in force with regard to the product concerned.

(11) The investigation confirmed that the applicant had not exported the product concerned during the original investigation period, i.e. from 1 April 1997 to 31 March 1998.

(12) It was established that the applicant had only realised one sale to the Community which actually took place in August 2001, i.e. after the original investigation period but well before the review investigation period.

(13) In reply to the questionnaire, the applicant identified only one contract that had been signed during the review investigation period, but the on-spot verification confirmed that the sale had never been materialised. Consequently, there was no irrevocable contractual obligation undertaken by the applicant to export to the Community.

(14) However, it is noted that the company had significant export sales to other countries during the review investigation period which allowed for the calculation of the benefit accruing to export sales from subsidisation, since such benefits accrue regardless of the destination of these sales.

In this respect, the Commission decided to verify all information it deemed necessary for the purpose of the investigation of the accelerated review in order to calculate any amount of countervailable subsidy by allocating such amount over the level of the relevant total turnover of the applicant during the review investigation period.

2. Subsidisation

(15) On the basis of the information contained in the applicant's reply to the Commission's questionnaire, the following schemes were investigated:

— Duty Entitlement Passbook Scheme,

— Income Tax Exemption Scheme,

— Export Promotion Capital Goods Scheme,

— Export Processing Zones/Export Oriented Units.

3. Duty Entitlement Passbook Scheme (DEPB)

General

(16) It was established that the applicant received benefits under this scheme during the review investigation period. It made use of the DEPB on a post-export basis. The detailed description of the scheme is contained in paragraph 4.3 of the Export and Import Policy (Notification No 1/2002-07 of 31 March 2002 of the Ministry of Commerce and Industry of the Government of India).

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 product concerned, on the basis of the Standard Input/Output Norms (SION). 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 the importation of which 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 on which the licence is granted.

(17) The characteristics of the DEPB have not changed since the original investigation. The scheme is a subsidy contingent in law upon export performance, and it was therefore determined during the original investigation that it is deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.

Calculation of the subsidy amount

(18) It was established that the applicant transferred all the DEPB credits to its related company Viraj Alloys Ltd. The same practice was also followed by three other related Indian companies of the applicant, i.e. Viraj Forgings Ltd, Viraj Impoexpo Ltd and Viraj Profiles Ltd. The investigation confirmed that Viraj Alloys Ltd is the provider of the raw materials of all the previous mentioned companies and used their transferred DEPB credits to make duty-free imports.

Moreover, it was established that exports of the product concerned were made via several related companies. Taking into account that the owners of the applicant control all these related companies through an extensive shareholding system, and that the related companies are involved in certain aspects of the manufacture and distribution of the product concerned, it was considered appropriate to treat all these companies as a single recipient of the benefit.

Therefore, the subsidy amount under the DEPB scheme was based on the amount of the total credit in the licences granted to both the applicant and its related companies. Given that the subsidy was not granted by reference to the quantities exported, the subsidy amount has been allocated over the total export turnover of the applicant and its related companies in accordance with the provisions of Article 7(2) of the basic Regulation.

In conclusion, VSL Wires Limited benefited from this scheme during the review investigation period and obtained subsidies of 12,7 %.

4. **Income Tax Exemption Scheme (ITES)**

General

(19) It was established that the applicant received benefits under this scheme and in particular under Section 80HHC of the Indian Income Act.

The Indian Income Tax Act 1961 sets out the basis for exemptions that can be claimed by firms on the collection of taxes. Among the exemptions which can be claimed are those covered by Sections 10A (applicable for companies located in Free Trade Zones), 10B (applicable for companies being Export Oriented Units) and 80HHC (applicable for companies which export goods) of the Act. To benefit from the ITES, a firm has to make the relevant claim when submitting its tax return to the Tax Authorities. The tax year runs from 1 April to 31 March and the tax return must be submitted by 30 November of the following year. In this case, the review investigation period coincided with the tax and the financial year 1 April 2002 to 31 March 2003.

(20) The characteristics of the ITES have not changed since the original investigation. It was determined during the original investigation that the ITES is a countervailable subsidy, as the GOI confers a financial contribution to the company by forgoing government revenue in the form of direct taxes on profits from exports which would otherwise be due if the income tax exemptions were not claimed by the company. However, it was found that the ITES under Section 80HHC is gradually being phased out starting from the financial year 2000-2001 until the financial year 2004-2005 when no export profit would be exempted from income tax. During the review investigation period only 50 % of profits obtained from exports were exempted from income tax.

(21) The subsidy is contingent in law upon 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.

Calculation of the subsidy amount

(22) The benefit to the applicant has been calculated on the basis of the difference between the amount of taxes normally due with and without the benefit of the exemption during the review investigation period. The rate of income tax, including corporate tax plus surcharge, applicable during this period was 36,75 %. In order to establish the full benefit to the applicant and given that three companies related to the applicant have also exported the product concerned during the review investigation period (see recital 18), the amount of subsidy has been established taking into account the income tax exemptions under Section 80HHC of the applicant, Viraj Forgings Ltd, Viraj Impoexpo Ltd and Viraj Profiles Ltd. Given that the subsidy was not granted by reference to the quantities exported, the subsidy amount has been allocated over the total export turnover of the applicant and its related companies in accordance with the provisions of Article 7(2) of the basic Regulation. On this basis, it was established that VSL Wires Limited obtained under this scheme subsidies of 1,4 %.

5. **Export Promotion Capital Goods Scheme (EPCGS)**

(23) It was established that the applicant had not availed itself of the EPCGS.

6. **Export Processing Zones (EPZ)/Export Oriented Units (EOU)**

(24) It was established that the applicant was not located in an EPZ and was not an EOU and, therefore, had not availed of the scheme.

7. **Other schemes**

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

8. **Amount of countervailable subsidies**

(26) Taking account of the definitive findings relating to the various schemes as already set out, the amount of countervailable subsidies for the applicant is as follows:

	DEPB	ITES	Total
VSL Wires Limited	12,7 %	1,4 %	14,1 %

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

(27) Based on the findings made during the investigation, it is considered that imports into the Community of stainless steel wire having a diameter of 1 mm or more produced and exported by VSL Wires Limited should be subject to a level of countervailing duty corresponding to individual amounts of subsidies established for this company during the review investigation period.

(28) Regulation (EC) No 1599/1999 should therefore be amended accordingly.

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

(29) The Commission informed the applicant and the GOI of the essential facts and considerations on the basis of which it was intended to propose that Regulation (EC) No 1599/1999 be amended. They were also given a reasonable period of time to comment.

(30) In its response to the disclosure, the applicant claimed that the post-export DEPB is a substitution remission/drawback scheme which was wrongly assessed by the Commission in terms of extent of subsidy and amount of countervailable benefit. It argued that the Commission's assessment of the benefits under this scheme was incorrect since only the excess duty drawback could be considered a subsidy and that the practical operations of the system have not been investigated by the Commission.

The Commission has repeatedly concluded (see for example Council Regulation (EC) No 1338/2002 [1] and in particular recitals 14 to 20) that post-export DEPB is not a drawback or a substitution drawback scheme as it does not conform to any of the provisions of Annexes I to III of the basic Regulation linked to its Article 2(1)(ii). The scheme lacks a built-in obligation to import only goods that are consumed in the production of the exported goods (Annex II of the basic Regulation) which would ensure that the requirements of Annex I(i) were met. Furthermore, there is no verification system in place to check whether the imports are actually consumed in the production process. It is also not a substitution drawback scheme because the imported goods do not need to be of the same quantity and characteristics as the domestically sourced inputs that were used for export production (Annex III of the basic Regulation). Lastly, exporting producers are eligible for the DEPB benefits regardless of whether they import any inputs at all.

In the case of the applicant, the investigation confirmed that the raw materials were imported duty-free by one of its related companies with the use of the transferred DEPB credits of all related companies obtained from exports of different products. However, no link could be established between each company's credits and the actual imported goods from the sole related company assigned with the task of raw material imports. Furthermore, there was no verification system in place by the GOI to control what imports were actually consumed into what product and by which company. Since the above exception to the subsidy definition does not therefore apply, the countervailable benefit is the amount of the total credit granted under the scheme. For these reasons the claim cannot be accepted.

[1] OJ L 196, 25.7.2002, p. 1. Regulation as amended by Regulation (EC) No 492/2004 (OJ L 80, 18.3.2004, p. 6).

The applicant further claimed that 'the Commission's services failed to offset import duties from the costs, thus, rendering the subsidy calculations incorrect and exaggerated'. In this respect, it should be noted that the applicant was requested in advance and based on the situation described in recital 18 above to submit post-export DEPB credits listings for all its exports made during the review investigation period. The applicant was also requested to submit the same information for all exports made by its related companies for the same period, along with details of any application fees or other costs incurred in order to obtain the credits. However, the applicant has not reported any such details and was not in a position to provide such information during the on-spot verification. Therefore, due to the lack of any relevant information, no adjustment for such costs could be made on the amount of subsidy as established in recital 18.

(31) This review does not affect the date on which Council Regulation (EC) No 1599/1999 will expire pursuant to Article 18(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 1(2) of Regulation (EC) No 1599/1999 is hereby amended by adding the following:

'VSL Wires Limited, G-1/3 MIDC, Tarapur Industrial Area, Boisar District, Thane, Maharashtra, India	14,1	A444'

Article 2

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, 12 July 2004.

For the Council
The President
B. BOT