

COUNCIL REGULATION (EC) No 164/2002**of 28 January 2002****amending Regulation (EC) No 1599/1999 imposing a definitive countervailing duty on imports of stainless steel wire having a diameter of 1 mm or more, originating in India**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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 Article 20 thereof,

After consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

- (1) By Regulation (EC) 1599/1999⁽²⁾, the Council imposed a definitive countervailing duty on imports of stainless steel wire having a diameter of 1 mm or more (hereinafter referred to as 'the product concerned') falling within CN code ex 7223 00 19 originating in India. The measures took the form of *ad valorem* duties of between 0 and 35,4 % on individual exporters with a residual duty of 48,8 %.

B. CURRENT PROCEDURE**1. Request for review**

- (2) After the definitive measures had been imposed, the Commission received a request for the initiation of an accelerated review of Regulation (EC) No 1599/1999, pursuant to Article 20 of Regulation (EC) No 2026/97 (hereinafter referred to as 'the basic Regulation'), from two Indian producers of the product concerned, Sindia Steels Limited and Nevatia Steel & Alloys Private Limited ('Nevatia'), both located in Mumbai. The companies concerned claimed that they were not related to any other exporting producers of the product concerned in India. Furthermore, they claimed that they had not exported the product concerned during the original period of investigation (1 April 1997 to 31 March 1998), but had exported the product concerned to the Community since then.

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 1599/1999 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 1599/1999.

4. Parties concerned

- (5) The Commission officially advised the two companies concerned and the Government of India (GOI). 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 April 1998 to 31 March 1999 (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) As no request for a review of the findings on injury was made in this investigation, this review was limited to subsidisation.
- (9) The Commission examined the same subsidy schemes which were analysed in the original investigation. It was also examined whether the exporting producers had used any subsidy schemes which were alleged in the original complaint but not used during the original investigation.

It was finally examined whether the exporting producers 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.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

⁽²⁾ OJ L 189, 22.7.1999, p. 1.

⁽³⁾ OJ C 288, 9.10.1999, p. 45.

D. RESULTS OF THE INVESTIGATION

1. Withdrawal of request for review

- (10) During the investigation, one company, Nevatia, withdrew its request for an accelerated review. Therefore, the investigation regarding this company shall be terminated. Consequently, the further analysis only refers to the other request for an accelerated review, i.e. by Sindia Steels Limited.

2. New exporter qualification

- (11) The investigation confirmed that Sindia Steels Limited 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, Sindia Steels Limited was able to demonstrate satisfactorily that it 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 Sindia Steels Limited should be considered as a new exporter in accordance with Article 20 of the basic Regulation, since it was not individually investigated during the original investigation for reasons other than a refusal to cooperate with the Commission, and thus an individual countervailing duty rate should be determined for it.

3. 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 Scheme.

4. Passbook Scheme (PBS)

- (13) Sindia Steels Limited had not availed itself 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).

5. Duty Entitlement Passbook Scheme (DEPB)

General

- (14) It was established that Sindia Steels Limited had received benefits under this scheme. This company made use of 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 (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.

- (15) The characteristics of the DEPB have not changed since the original investigation. The scheme is a subsidy contingent 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

- (16) It was established that Sindia Steels Limited did not use the licences to make duty-free imports. Instead this company sold some of its licences, and the benefit was calculated on the basis of the amount of credit in the licence regardless of the sale price of the licence. The company claimed that the benefit should be limited to the effective sale price of the licence, which is often less than the face value of the credits in the licence. However, in accordance with the findings in the initial investigation (Commission Regulation (EC) No 618/1999⁽¹⁾), recital 34, as confirmed by Regulation (EC) No 1599/1999, 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.

As in the original investigation, the total value of the subsidy has been allocated over total exports in the investigation period. Where the company made duly substantiated claims for deductions linked to the payment of fees for obtaining the DEPB Licence, these were granted.

⁽¹⁾ OJ L 79, 24.3.1999, p. 25.

Sindia Steels Limited benefited from this scheme during the investigation period and obtained subsidies of 15,5 %.

6. Export Promotion Capital Goods Scheme (EPCGS)

General

- (17) It was established that Sindia Steels Limited 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.

- (18) 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 GOI, government revenue otherwise due being 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 upon 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

- (19) Using the same calculation methodology as in the original investigation, 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. This amount has then been allocated over total exports during the investigation period.

- (20) Sindia Steels Limited obtained a benefit under this scheme of 0,3 %.

7. Export Processing Zones (EPZ)/Export Oriented Units (EOU)

- (21) It was established that Sindia Steels Limited was not located in an EPZ and was not an EOU.

8. Income Tax Exemption Scheme (ITES)

- (22) It was established that Sindia Steels Limited had not availed itself of the ITES.

9. Other schemes

- (23) It was established that Sindia Steels Limited 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.

10. Amount of countervailable subsidies

- (24) Taking account of the definitive findings relating to the various schemes as set out above, the amount of countervailable subsidies for Sindia Steels Limited is as follows:

	DEPB	EPCGS	Total
Sindia Steels Ltd	15,5 %	0,3 %	15,8 %

E. AMENDMENT OF THE MEASURES BEING REVIEWED

- (25) 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 Sindia Steels Limited should be subject to a level of countervailing duty corresponding to individual amounts of subsidies established for this company.
- (26) Regulation (EC) No 1599/1999 should therefore be amended accordingly.

F. DISCLOSURE AND DURATION OF THE MEASURE

- (27) The company concerned has been informed on the facts and considerations on the basis of which it is intended to propose that Regulation (EC) No 1599/1999 be amended, and was given the opportunity to comment. No comments were received.
- (28) The review carried out does not affect the date on which Regulation (EC) No 1599/1999 will expire pursuant to Article 18(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The following shall be inserted into the table in Article 1(2) of Regulation (EC) No 1599/1999:

— Sindia Steels Limited	15,8	A285'
53/9 AB. Samitha complex, Off Andheri Kurla Road Safeed Pool, Andheri (East), Mumbai 400 072, India		

Article 2

The accelerated review of Regulation (EC) No 1599/1999 concerning imports by Nevatia Steel & Alloys Private Limited of stainless steel wires with a diameter of 1 mm or more originating in India is hereby terminated.

Article 3

This Regulation shall enter into force on the day following that of 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, 28 January 2002.

For the Council
The President

J. PIQUÉ I CAMPS
