

COMMISSION IMPLEMENTING REGULATION (EU) 2019/99**of 22 January 2019****terminating the absorption reinvestigation concerning imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India without amending the measures in force**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Articles 9(2) and 12 thereof,

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) The measures currently in force are a definitive anti-dumping duty imposed by Commission Implementing Regulation (EU) 2016/388 ⁽²⁾ imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India, as amended by Implementing Regulation (EU) 2016/1369 ⁽³⁾.
- (2) The product concerned is also subject to a definitive countervailing duty imposed by Commission Implementing Regulation (EU) 2016/387 ⁽⁴⁾. However, the countervailing duty is not subject to this reinvestigation.

1.2. Request for an absorption reinvestigation

- (3) The Commission received a request for an absorption reinvestigation of the anti-dumping measures in force pursuant to Article 12 of the basic Regulation.
- (4) The request was lodged on 16 March 2018 by Saint-Gobain PAM, Saint-Gobain PAM Deutschland GmbH, Saint-Gobain PAM España S.A. and Duktus (Production) GmbH ('the Applicant'), four Union producers representing more than 90 % of the total Union production of tubes and pipes of ductile cast iron.
- (5) The Applicant had submitted sufficient evidence justifying a reopening of the anti-dumping investigation. The Applicant claimed that resale prices to non-related customers in the Union had decreased after the original investigation period and following the imposition of the anti-dumping duty and that this has impeded the intended remedial effects of the measures in force. The evidence contained in the request indicated that the decrease in resale prices could not be explained by other factors such as changes in raw material prices.

1.3. Reopening of the anti-dumping investigation

- (6) On 30 April 2018, the Commission announced the reopening of the anti-dumping investigation by a notice published in the *Official Journal of the European Union* ('the Notice of Reopening') ⁽⁵⁾.
- (7) The reinvestigation concerned the current anti-dumping duty of 14,1 % imposed on Jindal Saw Limited ('Jindal'), and its related companies, and on 'All other companies' as set out in Article 1 of Implementing Regulation (EU) 2016/388.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Commission Implementing Regulation (EU) 2016/388 of 17 March 2016 imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India (OJ L 73, 18.3.2016, p. 53).

⁽³⁾ Commission Implementing Regulation (EU) 2016/1369 of 11 August 2016 amending Implementing Regulation (EU) 2016/388 imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India (OJ L 217, 12.8.2016, p. 4).

⁽⁴⁾ Commission Regulation (EU) 2016/387 of 17 March 2016 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India (OJ L 73, 18.3.2016, p. 1).

⁽⁵⁾ OJ C 151, 30.4.2018, p. 57.

1.4. Interested parties

- (8) In the Notice of Reopening, the Commission invited interested parties to contact it in order to participate in the re-investigation. In addition, the Commission specifically informed the Applicant, exporting producers and importers known to be concerned and the authorities of the country concerned about the absorption re-investigation and invited them to participate.
- (9) Interested parties were given the opportunity to make their views known in writing and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. Jindal requested and was granted a hearing with the Commission.

1.5. Reinvestigating exporting producers

- (10) The Commission sent a questionnaire to Jindal and its related companies and invited other exporting producers to make themselves known within 15 days from the publication of the Notice of Reopening.
- (11) One Indian exporting producer, Electrosteel Castings Limited, came forward within the deadline but was not concerned by the re-investigation, as it is not subject to a definitive anti-dumping duty based on Article 1 of Implementing Regulation (EU) 2016/388.
- (12) Two other Indian exporting producers, Electrotherm (India) Ltd and Tata Metaliks Limited, came forward after the deadline. These companies are subject to the rate applicable to 'All other companies' in Article 1 of Implementing Regulation (EU) 2016/388, which was set at the level of the individual anti-dumping duty for Jindal of 14,1 % in the original investigation. Both companies had negligible Union sales in the absorption re-investigation period. In view of the fact that these companies came forward too late, the Commission did not send them a questionnaire.

1.6. Sampling of unrelated importers

- (13) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Reopening. None came forward.

1.7. Replies to the questionnaire

- (14) The Commission sent a questionnaire to Jindal to which it replied.

1.8. Verification visits

- (15) The Commission sought and verified all the information deemed necessary for the purpose of this re-investigation. A verification visit pursuant to Article 16 of the basic Regulation was carried out at the premises of the following company: Jindal Saw Italia SpA, Trieste, Italy ('Jindal Italy'). Jindal Italy is the only related company of Jindal in the Union (see section 3.1).

1.9. Disclosure

- (16) On 24 October 2018, the Commission sent all interested parties a disclosure document which contained the essential facts and considerations on the basis of which the Commission proposed to terminate the re-investigation. Interested parties were informed of the deadline within which they could comment on the disclosure. Two entities, the Applicant and Jindal, reacted to the disclosure. The Applicant requested and was granted a hearing with the Commission. The comments submitted by interested parties were considered and taken into account where warranted.

1.10. Periods covered by the absorption re-investigation

- (17) The absorption re-investigation period ('RIP') was 1 April 2017 to 31 March 2018. The period concerned was 1 April 2016 to 31 March 2018. The original investigation period ('OIP') was 1 October 2013 to 30 September 2014.

2. PRODUCT CONCERNED

- (18) The product concerned is defined as tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), with the exclusion of tubes and pipes of ductile cast iron without internal and external coating ('bare pipes'), currently falling within CN codes ex 7303 00 10 and ex 7303 00 90 (TARIC codes 7303 00 10 10, 7303 00 90 10), originating in India ('the product concerned').

3. FINDINGS

- (19) An absorption reinvestigation pursuant to Article 12 of the basic Regulation aims at establishing whether or not export prices have decreased or whether there has been no movement, or insufficient movement, in resale prices or subsequent selling prices in the Union of the product concerned since the imposition of the original measures. As a second step, if it is concluded that the measure should have led to movements in such prices, then, in order to remove the injury previously established in accordance with Article 3 of the basic Regulation, export prices shall be reassessed in accordance with Article 2 of the basic Regulation and dumping margins shall be recalculated to take account of the reassessed export prices.

3.1. Changes to Jindal's business model and Union sales

- (20) Following the imposition of the measures, sales of Jindal to the Union have dropped by around 90 % by comparison with the OIP. Jindal's Union sales, at [less than 2 000 metric tonnes], now account for [less than 0,5 %] of Union consumption.
- (21) Furthermore, changes took place in Jindal's sales structure since the OIP. In the OIP Jindal had three related sales companies in the UK, Spain and Italy respectively, while in the RIP only the Italian related company remains. Jindal Italy accounts for the large majority of Jindal's sales to the Union, with only limited direct exports.
- (22) Furthermore, in the RIP Jindal sold to significantly fewer clients ([less than half by comparison with the OIP]) in fewer Member States ([less than half by comparison with the OIP]) than in the original investigation. Jindal also sold a much lower number of product types (PCNs): [less than half by comparison with the OIP].

3.2. Analysis of price developments

- (23) When establishing whether there was a decrease in export prices the Commission normally establishes for each examined exporting producer its export prices during the RIP and compares these prices to the corresponding export prices determined in the OIP. However, given very low volumes of direct export sales as described in recital (21), the direct export price from Jindal to the Union to independent customers could not be meaningfully compared. As the analysis of prices should be based on the price to the first independent customer, and given that Jindal's related companies in Spain and the UK no longer exist, the Commission based its analysis only on the resale price of Jindal Italy to the first unrelated customer.
- (24) In view of the very limited volumes considered and of the changes in product types highlighted in section 3.1, any comparison on a PCN to PCN basis was unrepresentative and could thus not lead to a meaningful analysis.
- (25) For an indicative analysis, the Commission conducted a comparison on an overall weighted average price per kilogram for all product types for sales made by Jindal Italy to the first unrelated customer. It found that Jindal's resale price on average increased by [more than 10 %] between the RIP and the OIP, thus reflecting [more than 80 %] of the 14,1 % anti-dumping duty.
- (26) In addition, part of Jindal's sales in the RIP took place based on prices fixed in tenders before the imposition of the measures. It cannot be expected that the sales price for such sales would have changed, and therefore a price comparison is of limited relevance.
- (27) Following disclosure, the Applicant submitted various claims. First, the Applicant argued that the Commission should take into account three external factors: the countervailing duty of 8,7 %, the conventional customs duty of 3,2 %, and the exchange rate between INR and EUR.
- (28) As for the countervailing duty, the Applicant submitted that the increase in the resale price must be attributed first to the countervailing duty up to the level of 8,7 %. The Commission noted that the reinvestigation is limited to alleged absorption of the anti-dumping duty. In any event, the findings in this investigation show that Jindal Italy increased its prices beyond the level of the countervailing duty imposed in 2016. Consequently, this claim was rejected.
- (29) As for the conventional customs duty, the Applicant noted the fact that the conventional customs duty for the product concerned had changed between the OIP and the RIP from 0 % to 3,2 %. Indeed, the products

corresponding to Generalised Scheme of Preferences category S-15a, which include products covered in chapter 73 including the product concerned, are currently subject to a 3,2 % conventional customs duty. The Applicant argued that this change should be taken into account in the assessment of the increase of the resale price. The Commission confirmed that the duty had already been taken into account in the analysis disclosed to interested parties. The Commission, however, noted that had the increase in the conventional customs duty not been accounted for, the price increase found would have been higher. As either approach would not change the findings on the sufficient price increase, the Commission, left open the question whether the increase in the conventional customs duty should be considered for the price comparison in this case or not.

- (30) As for the exchange rate, the Applicant argued that the change in the exchange rate between EUR and INR should be taken into account. It argued that, as the INR value against the EUR increased, price competitiveness of Indian exports decreased. The Commission considered that changes in currency exchange rates may be a factor to consider in situations where the invoicing is made in a foreign currency. However, in this case the comparison was made based on the resale price which was invoiced in EUR during both the OIP and the RIP so that the same currency was used to estimate the amount of price increase. Therefore, any adjustments due to changes in the exchange rate between INR and EUR were not warranted and the request was rejected.
- (31) Second, the Applicant also argued that tender sales are not unrepresentative and should be included. The Commission clarified that these sales were not excluded in the price comparison (see recital (26) above).
- (32) Third, the Applicant argued that, to be considered significant, the movement in resale price should have been at least equivalent to the level of the duty imposed. The Commission noted that the assessment is case-specific and that the legal threshold for finding absorption is not whether the price movement is significant but rather whether there has been no or insufficient movement of the resale price thereby nullifying the effect of the anti-dumping duty. In this case the Commission found that a price increase of more than 10 % could not be considered insufficient.
- (33) Fourth, the Applicant asked the Commission to investigate the products imported by Jindal Italy from Jindal's plant in the United Arab Emirates or any other source to confirm that those imports were not originating in India or had otherwise been misclassified. The Commission noted that this claim rather refers to an allegation of circumvention, which is not the subject matter of an absorption reinvestigation.
- (34) Fifth, the Applicant submitted that the Commission should have compared not only the resale price of Jindal Italy in the RIP with that of Jindal Italy in the OIP, but also with the resale price of Jindal's former subsidiaries in Spain and the UK in the OIP. The Applicant argued that this approach would be warranted since the anti-dumping duty relates to all sales of Jindal.
- (35) The Commission considered that such a comparison would not be appropriate and would not render meaningful results given notably the different product mix, delivery terms and invoice currencies. It thus maintained that a price comparison on Jindal Italy sales only was the adequate benchmark. Nonetheless, for the sake of completeness, the Commission made a simulation in which it compared Jindal Italy's resale price in the RIP with the resale price of all Jindal subsidiaries in the OIP. That simulation showed that the resale price on average would have further increased (by [more than 13 %]) between the RIP and the OIP. Therefore, such an analysis, despite its limited relevance, would have reinforced the conclusion of the Commission in this reinvestigation.
- (36) Finally, the Applicant asked about the direct sales to the Union of Jindal. The Commission noted that the volumes could not be considered significant ([less than 300 tonnes]) and were mainly sold on different delivery terms than in the original investigation. Therefore, a meaningful comparison could not be carried out. Consequently, those sales were excluded from the price comparison.

3.3. Conclusion

- (37) In view of the limited volumes and lack of comparability, the Commission could not conduct a conclusive and detailed price analysis for Jindal. Nonetheless, as mentioned in recital (25), the Commission found that, overall, Jindal Italy's resale price increased in comparison with the OIP, and, therefore, the measures led to a positive movement in prices in similar measure to the duty concerned. In addition, given the significant decrease in volumes, the Commission found that the effect of the measures was not undermined.

- (38) In the absence of cooperation and in view of the negligible volumes ([less than 0,1 %] of Union consumption) sold by other Indian exporting producers subject to this reinvestigation, the Commission considered that the above findings also apply to 'All other companies'. In this respect the Commission observed that the available statistical data for 'All other companies' could not be considered meaningful in view of the low volumes and the absence of information on sales channels by other Indian exporting producers subject to this reinvestigation. Nonetheless, as an indication the Commission noted that the price data of the negligible sales volume, collected pursuant to the import statistics database set out in Article 14(6) of the basic Regulation, showed an average price for 'All other companies' that was similar to the average price of Jindal.
- (39) Therefore, the Commission considered that the measures have had an effect in relation to Jindal and 'All other companies' referred to in Article 1 of Implementing Regulation (EU) 2016/388.
- (40) In view of these findings, the Commission did not consider it necessary to proceed with a recalculation of the duty.

4. DISCLOSURE AND CONCLUSION

- (41) As set out in section 1.9 above, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to terminate the absorption reinvestigation. Comments were analysed and taken into consideration where warranted.
- (42) For the reasons stated above, the Commission concluded that the absorption reinvestigation should be terminated without amending the measures in force.
- (43) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036.

HAS ADOPTED THIS REGULATION:

Article 1

The absorption reinvestigation concerning imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India pursuant to Article 12 of Regulation (EU) 2016/1036 is hereby terminated without amending the anti-dumping measures in force.

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, 22 January 2019.

For the Commission
The President
Jean-Claude JUNCKER
