

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) 2015/1483

of 1 September 2015

**amending Council Implementing Regulation (EU) No 1106/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India following and absorption reinvestigation pursuant to Article 12 of Council Regulation (EC) No 1225/2009**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup> ('the basic Regulation'), and in particular Article 12(3) thereof,

Whereas:

## A. PROCEDURE

## 1. Measures in force

- (1) By Implementing Regulation (EU) No 1106/2013 <sup>(2)</sup> the Council imposed a definitive anti-dumping duty on imports of certain stainless steel wires originating in India (the original investigation). The measures imposed took the form of an ad valorem duty ranging from 0,7 % to 12,5 % for the sampled companies, 5 % for the cooperated non-sampled companies and 12,5 % for the non-cooperating companies.
- (2) By Implementing Regulation (EU) No 861/2013 <sup>(3)</sup> the Council imposed a definitive countervailing duty on imports of certain stainless steel wires originating in India ranging from 3,0 % to 3,7 %.

## 2. Request for an absorption reinvestigation

- (3) The Commission received a request for the initiation of an absorption reinvestigation of the measures in force pursuant to Article 12 of the basic Regulation.
- (4) The request was lodged on 21 October 2014 by the European Confederation of Iron and Steel Industries ('Eurofer' or 'the applicant') on behalf of producers representing more than 25 % of the total Union production of certain stainless steel wire.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> Council Implementing Regulation (EU) No 1106/2013 of 5 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India (OJ L 298, 8.11.2013, p. 1).

<sup>(3)</sup> 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 (OJ L 240, 7.9.2013, p. 1).

- (5) The request was based on the grounds that following the imposition of the anti-dumping duties on imports of certain stainless steel wires originating in India, export prices have decreased and there has been insufficient movement in resale prices or subsequent selling prices in the Union. This resulted in an increased dumping margin which has impeded the intended remedial effects of the measures in force.

### 3. Initiation of an absorption reinvestigation

- (6) Having determined, after informing the Member States, that sufficient evidence existed for the reopening of the investigation, the Commission announced on 3 December 2014, by a notice published in the *Official Journal of the European Union* <sup>(1)</sup> ('Notice of Initiation'), the initiation of an absorption reinvestigation pursuant to Article 12(1) of the basic Regulation.

### 4. Interested parties

- (7) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicant, exporting producers and importers known to be concerned and the representatives of India about the initiation of the absorption reinvestigation and invited them to participate.
- (8) 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. None of the interested parties came forward and requested a hearing.

### 5. Sampling

- (9) In view of the apparent large number of Indian exporting producers and unrelated importers in the Union, sampling was envisaged in the Notice of Initiation in accordance with Article 17 of the basic Regulation.
- (10) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a representative sample, Indian exporting producers and unrelated importers were requested to make themselves known within 15 days of the initiation of the absorption reinvestigation and to provide the Commission with the information requested in the Notice of Initiation.
- (11) Seventeen exporting producers in India provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of six companies or groups of companies on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. The sampled companies are the same as those selected for sample or for individual examination in the original investigation with the exception of Macro Bars and Wires which was found not to be dumping in the original investigation and was thus not reinvestigated.
- (12) In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the authorities of India were consulted on the selection of the sample. No comments were made. Therefore, the Commission decided to retain the proposed sample of six companies/groups of companies and all interested parties were accordingly informed of the finally selected sample.
- (13) The sample of exporting producers of stainless steel wires was therefore the following:
- Garg Inox,
  - Nevatia Steel & Alloys,
  - Raajratna Metal Industries,

<sup>(1)</sup> OJ C 433, 3.12.2014, p. 8.

- the Venus Group (Hindustan Inox, Precision Metals, Sieves Manufacturer India and Venus Wire Industries),
- Viraj Profiles.

These companies were sampled in the original investigation.

- KEI Industries,

This company was subject to individual examination in the original investigation.

- (14) In total 22 known unrelated importers were contacted and 1 of them came forward and replied to the sampling form. It was therefore not necessary to sample unrelated importers.

#### **6. Replies to the questionnaires**

- (15) The Commission sent questionnaires to the six sampled Indian exporting producers/groups of exporting producers. Questionnaire replies were received from all of them. As regards the cooperating unrelated importer, as it did not import the product concerned to the Union during AIP no questionnaire was sent to it.
- (16) In view of various exceptional circumstances, some of the sampled exporting producers also requested extensions to submit their replies. These extensions were granted when duly justified. For these reasons, the absorption reinvestigation exceeded the normal period of six months provided for in Article 12(4) of the basic Regulation.

#### **7. Verification visits**

- (17) The Commission sought and verified all the information deemed necessary for the purpose of this reinvestigation. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of all the sampled Indian exporting producers.

#### **8. Relevant periods covered by the absorption reinvestigation**

- (18) The absorption reinvestigation covered the period from 1 October 2013 to 30 September 2014 (the 'AIP'). The original investigation period covered the period from 1 April 2011 to 31 March 2012 ('OIP').

### **B. PRODUCT CONCERNED AND LIKE PRODUCT**

- (19) The product subject to this absorption reinvestigation is the same as that covered by the original investigation, defined as stainless steel wires containing by weight:

- 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,
- 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.

- (20) The investigation showed that the product concerned, the product produced and sold on the domestic market of India, and the product produced and sold in the Union by the Union industry have the same basic physical, chemical and technical characteristics as well as the same basic uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

### C. FINDINGS OF THE ABSORPTION REINVESTIGATION

- (21) In general, 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 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, where it is concluded that absorption took place, a new dumping margin should be calculated.

#### 1. Decrease of export prices

- (22) When establishing whether there was a decrease in export prices the Commission established for each examined company its cost, insurance and freight (CIF) export prices at the Union custom border during the AIP and compared these prices to the corresponding export prices determined in the OIP.
- (23) The sampled exporting producers exported to the Union either directly to independent customers or through related companies.
- (24) Where the exporting producers exported the product concerned directly to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (25) Where the exporting producers exported the product concerned to the Union through a related company acting as an importer, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses, and for profits accruing.
- (26) The Commission compared for all sampled companies/groups of companies the prices of the product types sold in the AIP with the same product types sold in the OIP and calculated for them a weighted average level of absorption.
- (27) The above comparison was made in euro. In the case of sales via a related importer, resale prices expressed in euro (or USD, or GBP) were converted into INR in order to be able to deduct all costs between importation and resale and, in the case of direct sales by an Indian exporting producer, all costs between the Indian border and the Union border expressed in INR were added to the FOB prices expressed in INR. Consequently, the CIF values obtained were converted into euro.
- (28) The comparison of the export prices to the Union showed that for all of the sampled companies/group of companies the export prices decreased, indicating prima facie that absorption of the measures in force was taking place. For the sampled exporting producers the decrease in export prices expressed in euro was as follows:

	GARG Inox	KEI Industries	Nevatia Steel & Alloys	Venus group	Viraj Profiles	Raajratna Metal Industries
Evolution of export prices from OIP to AIP (EUR)	- 23,91 %	- 21,26 %	- 22,77 %	- 26,31 %	- 27,44 %	- 25,52 %

#### 2. Dumping

- (29) After having established possible absorption for all the sampled exporting producers, dumping margins were recalculated, according to Article 2 of the basic Regulation. In point 5.1.1(a) of the Notice of Initiation, the exporting producers were asked to inform the Commission within 15 days of the date of publication of the Notice of Initiation whether they request a revision of the normal value under Article 12(5) of the basic Regulation. With the exception of Venus group all other sampled exporting producers requested the revision of

their normal values based on Article 12(5) of the basic Regulation and provided Commission with complete information duly substantiated by evidence for the recalculation of their dumping margins. For Venus group which did not request for revision of its normal values, normal values as they were established in the original investigation were used for the calculation of dumping margins during the AIP.

(a) *Normal value*

- (30) For the sampled exporting producers the normal value was determined as follows:
- (31) The Commission first examined whether the total volume of domestic sales for each sampled exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product concerned to the Union during the investigation period. On this basis, the total sales by each sampled exporting producer of the like product on the domestic market were representative.
- (32) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the exporting producers with representative domestic sales.
- (33) The Commission then examined whether the domestic sales by each sampled exporting producer on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union.
- (34) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the absorption investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (35) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
  - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (36) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the AIP.
- (37) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the AIP, if:
- (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
  - (b) the weighted average price of this product type is below the unit cost of production.
- (38) Normal value was calculated as a weighted average of the prices of all domestic sales during the AIP or as a weighted average of the profitable sales only. All prices used for the dumping margin calculations were converted to Indian currency using transaction by transaction conversion rates.
- (b) *Export price*
- (39) The Commission used export prices from the AIP determined as explained in recitals 22-25 above.

(c) *Comparison*

- (40) The Commission compared the normal value and the export price of these exporting producers on an ex-works basis.
- (41) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for freight, insurance, credit cost, packing expenses and duties.

(d) *Dumping margin*

- (42) For the sampled cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (43) On this basis, the weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, developed as follows:

Company Name	Product Type Comparability (%)	Dumping Margin in OIP (%)	Dumping Margin in AIP (%)	Evolution of Dumping Margin (p.p.)
GARG Inox	90,3	11,8	5,2	- 6,6
KEI Industries	62,2	7,0	3,8	- 3,2
Nevatia Steel & Alloys	81,9	4,1	4,0	- 0,1
Venus group	96,6	11,6	12,4	0,8
Viraj Profiles	86,9	6,8	0,4	- 6,4
Raajratna Metal Industries	99,8	16,2	12,0	- 4,2

**3. Injury elimination level**

- (44) In accordance with the lesser duty rule under Article 9(4) of the basic Regulation, for Venus Group whose dumping margin increased, the Commission recalculated the injury margin.
- (45) The injury elimination level was determined on the basis of a comparison of the weighted average import price of Venus Group during the AIP, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the AIP. Any difference resulting from this comparison was then expressed as a percentage of the weighted average import CIF value.
- (46) On that basis, the injury margin for Venus Group increased from 23,4 % to 65,7 %.

**D. CONCLUSION**

- (47) The recalculation of the dumping margins according to the methodology described in recitals 31-38 above showed that for five out of six sampled companies the dumping margin decreased in the AIP. Therefore, for these companies the absorption reinvestigation should be terminated without amending the original measures. In the

case of Venus Group the dumping margin calculated for the AIP increased compared to that established in the OIP, demonstrating in that way that absorption was taking place. Hence, anti-dumping measures imposed on imports of the product concerned by the Venus Group should be amended in accordance with Article 12(3) of the basic Regulation.

- (48) As regards Venus Group, in accordance with the lesser duty rule in Article 9(4) of the basic Regulation, the Commission first compared the injury margin and the dumping margin. The amount of the duties should be set at the level of the dumping margin. As the anti-subsidy investigation remains unaffected by the present reinvestigation the countervailing duty needs to be deducted in order to determine the new anti-dumping duty. Consequently, for Venus Group the new anti-dumping duty is 9,4 % (i.e. the currently applicable dumping margin of 12,4 % minus 3 % countervailing duty).
- (49) The revised rate of anti-dumping duty applicable, before duty, to the net free-at-Union-frontier price will be as follows:

Company	Dumping margin	Countervailing duty	Injury margin	Definitive anti-dumping duty rate
GARG Inox	11,8 %	3,4 %	22,6 %	8,4 %
KEI Industries	7,0 %	0,0 %	41,9 %	7,7 %
Macro Bars and Wires	0,0 %	3,4 %	30,3 %	0,0 %
Nevatia Steel & Alloys	4,1 %	3,4 %	23,8 %	0,7 %
Raajratna Metal Industries	16,2 %	3,7 %	17,2 %	12,5 %
Venus group	12,4 %	3,0 %	65,7 %	9,4 %
Viraj Profiles	6,8 %	0,0 %	32,1 %	6,8 %
Cooperating non-sampled companies	8,4 %	3,4 %	23,7 %	5,0 %
All other companies	16,2 %	3,7 %	65,7 %	12,5 %

- (50) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.
- (51) Two interested parties submitted comments challenging the Commission's conclusions.
- (52) The complainant reiterated the claim it already made in the complaint that the drop in export prices is not a result of developments in raw material prices. It illustrated this statement by providing data showing the increase of the nickel price after the imposition of the definitive measures.
- (53) However, since the original measures were based on the findings of the original investigation period, the proper comparison that must be made is between the raw material prices during the original investigation period and the ones during the absorption investigation period. That comparison leads to a conclusion of decreasing raw material prices and the above claim therefore must be rejected.

- (54) For the one exporting producer not having applied for a new normal value determination, the complainant alleged that the Commission made a calculation error. However, the complainant applied an INR/EUR exchange rate of the beginning of the AIP to the prices found during the OIP and an INR/EUR exchange rate of the end of the AIP to the prices found during the AIP, invalidating its reasoning. The claim therefore had to be rejected.
- (55) The exporting producer for which the anti-dumping duty will be amended claimed that the Commission did not carry out the evaluation of the alleged insufficient movement in prices in a way that is compatible with the meaning and purpose of Article 12 of the basic Regulation. More specifically, in its price comparison, the Commission should have taken the exchange rate evolution into account as well as the evolution of production costs that it has observed at the level of the other exporting producers, who requested the application of Article 12(5), on the basis of a required spirit of good administration.
- (56) In fact, this type of claim refers to costs of production, and can only be taken into account in the context of a reexamination of normal value. However, pursuant to Article 12(5) of the basic Regulation, alleged changes in normal value shall only be taken into account where complete information on revised normal values is made available to the Commission. This was not the case and the claim is rejected.
- (57) The same exporting producer also made a number of comments and claims regarding the determination of its dumping margin based on export prices during the AIP and normal values determined during the OIP.
- (58) It requested the Commission to exclude transactions made by its related importer during the first month of the AIP since these sales referred to goods shipped by the Indian exporting producers of the Venus group prior to the AIP on the basis of prices determined equally before the AIP. It underscored this argument by arguing that the sales from India to the related importer and from the related importer to the Union unrelated customers are back to back sales.
- (59) In the first place it should be noted that the Commission does not consider the exporting producer's sales process to the Union a back to back operation. Sales from India during the AIP to the related importer could be made by any of the Indian exporting producers of the exporting producer's group and also clubbed together for shipment and the corresponding imported products were in a large number of cases sold to different Union customers and partially entered into the stocks of the related importer. From the opposite point of view, it means that a sale to an unrelated Union customer reported by the related importer during the AIP could be part of one or more direct deliveries from India, from one or more Indian exporting producers of the group, a sale from stock or a combination of both. These circumstances do not qualify such imports as back to back sales.
- (60) More fundamental however is the pricing mechanism where the base price fixed during the initial price agreement will on occasion be adjusted by applying the alloy surcharge in force at the moment of delivery. That contradicts the statement that prices are fixed well before the AIP. As a consequence, the request to eliminate the sales by the related importer of the first month of the AIP has to be rejected.
- (61) The same exporting producer invited the Commission to accept a reworked listing of sales transactions made by the related importer, corrected for the product types in the same way as the corrections that were made during the on-site investigations in India. It argues that such would be an acceptable approach as all sales are back to back.
- (62) The Commission could not accept a new submission of sales transactions at this late stage of the procedure as it was not in a position to verify this submission. Moreover, as mentioned above, the investigation showed that the sales transactions cannot be qualified as back to back sales. It should be noted that the exporting producer had ample time between the on-site investigations in India (first week of March 2015) and the on-site investigation at the German related importer (mid-April) to submit revised sales listings.
- (63) The same exporting producer noted that for a particular product type the Commission did not use the normal value established in the original investigation.
- (64) The Commission confirmed this observation and revised the dumping margins of the absorption investigation by using the normal values as they were established in the initial investigation.

- (65) The same exporting producer claimed that its SGA was arbitrarily determined at 5 % and should have been based on the data collected during the on-site investigation of its related importer and should not include transportation costs and other discounts, already deducted from the resale prices while constructing the export prices.
- (66) This claim was found to be justified as the on-site investigation had established a lower SGA than the 5 % used for this exporting producer's dumping calculation.
- (67) The exporting producer also claimed that the 5 % profit margin taken into account is excessive for this type of industry and that the Commission in similar circumstances would take profit margins of no more than 1 to 2 %.
- (68) In the absence of cooperation by unrelated importers in the absorption investigation, the Commission decided to rely upon the data collected in the original investigation as such data were considered sufficiently recent because they were based on the OIP ending March 2012. The profit ratios forwarded by the exporting producer in support of its claim were average earnings before tax ratios based on the financial years 2011 to 2013, mainly based on financial data collected from southern European countries where the economic context during that period was not optimal. The Commission therefore decided to use the findings of the original investigation, namely 2,65 % as the appropriate profit for an unrelated importer. This percentage was consequently used while constructing the export prices based on resale prices quoted by the related importer on the Union market.
- (69) Finally, the exporting producer claimed that the Commission erroneously determined the CIF values at the level of the related importer as the CIF values established are lower than what the related importer declared at Union Customs, and on which the imposition of the anti-dumping duty was based.
- (70) The Commission established CIF values based on the findings of the investigation, as the value declared at Union Customs is in any case a transfer price within the group. It was found in particular that there is no systemic relation between the resale price on the Union market and the transfer price, as the alloy surcharge finally added to the base price for resale on occasion does not correspond to the alloy surcharge taken into account while establishing the transfer price. The claim therefore was rejected.
- (71) In order to minimise the risk of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures, which only apply to company for which an individual duty rate is introduced, include the following: the presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other producers.
- (72) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

#### Article 1

In Council Implementing Regulation (EU) No 1106/2013, Article 1 is amended as follows:

(a) paragraph 2 shall be replaced by the following:

'2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 and manufactured by the companies listed below shall be as follows:

Company	Duty (%)	TARIC additional code
Garg Inox, Bahadurgarh, Haryana and Pune, Maharashtra	8,4	B931
KEI Industries Ltd, New Delhi	7,7	B925

Company	Duty (%)	TARIC additional code
Macro Bars and Wires, Mumbai, Maharashtra	0,0	B932
Nevatia Steel & Alloys, Mumbai, Maharashtra	0,7	B933
Raajratna Metal Industries, Ahmedabad, Gujarat	12,5	B775
Venus Wire Industries Pvt. Ltd, Mumbai, Maharashtra	9,4	B776
Precision Metals, Mumbai, Maharashtra	9,4	B777
Hindustan Inox Ltd, Mumbai, Maharashtra	9,4	B778
Sieves Manufacturer India Pvt. Ltd, Mumbai, Maharashtra	9,4	B779
Viraj Profiles Limited, Palghar, Maharashtra and Mumbai, Maharashtra	6,8	B780
Companies listed in the Annex	5,0	See Annex
All other companies	12,5	B999'

(b) the following paragraph 4 is added:

'4. The application of the individual duty rate specified for the companies mentioned in paragraph 2 and in the Annex shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: "I, the undersigned, certify that the (volume) of stainless steel wires sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in India. I declare that the information provided in this invoice is complete and correct." If no such invoice is presented, the duty rate applicable to "all other companies" shall apply.'

#### 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, 1 September 2015.

For the Commission  
The President  
Jean-Claude JUNCKER