

Commission opinion concerning a notice of initiation of an anti-subsidy proceeding concerning imports of certain stainless steel fasteners and parts thereof originating in India

(2011/C 142/05)

The European Commission ('the Commission') has received a complaint pursuant to Article 10 of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), alleging that imports of certain stainless steel fasteners and parts thereof, originating in India, are being subsidised and are thereby causing material injury to the Union industry.

1. Complaint

The complaint was lodged on 31 March 2011 by the European Industrial Fasteners Institute (EiFi) ('the complainant') on behalf of producers representing a major proportion, in this case more than 25 % of the total Union production of certain stainless steel fasteners and parts thereof.

2. Product under investigation

The product subject to this investigation is stainless steel fasteners and parts thereof ('the product under investigation').

3. Allegation of subsidisation

The product allegedly being subsidised is the product under investigation, originating in India ('the country concerned'), currently falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70. These CN codes are given for information only.

It is alleged that the producers of the product under investigation originating in India have benefited from a number of subsidies granted by the Government of India and from regional subsidies. The subsidies consist, inter alia, of the duty entitlement passbook scheme, the advance authorisation scheme, the duty-free import authorisation scheme, the export promotion capital goods scheme, benefits to export-oriented units, the focus product scheme, the export credit scheme and regional subsidies by the State of Maharashtra (inter alia sales tax/trade tax incentive, electricity duty exemption, octroi refund).

It is alleged that the above schemes are subsidies since they involve a financial contribution from the Government of India or other regional governments and confer a benefit to the recipients, i.e. to the exporting producers of the product under investigation. They are alleged to be contingent upon export performance and/or limited to specific companies and/or products and/or regions and therefore specific and countervailable.

4. Allegation of injury

The complainant has provided evidence that imports of the product under investigation from the country concerned have increased overall in absolute terms and in terms of market share.

The *prima facie* evidence provided by the complainant shows that the volume and the prices of the imported product under investigation have, among other consequences, had a negative impact on the quantities sold, the level of prices charged and the market share held by the Union industry, resulting in substantial adverse effects on the overall performance and the financial situation of the Union industry.

5. Procedure

Having determined, after consulting the Advisory Committee, that the complaint has been lodged by or on behalf of the Union industry and that there is sufficient evidence to justify the initiation of a proceeding, the Commission hereby initiates an investigation pursuant to Article 10 of the basic Regulation.

The investigation will determine whether the product under investigation originating in the country concerned is being subsidised and whether this subsidisation has caused injury to the Union industry. If the conclusions are affirmative, the investigation will examine whether the imposition of measures would not be against the Union interest.

5.1. Procedure for the determination of subsidisation

Exporting producers ⁽²⁾ of the product under investigation from the country concerned are invited to participate in the Commission investigation.

5.1.1. Investigating exporting producers

(a) Sampling

In view of the potentially large number of exporting producers in the country concerned involved in this proceeding and in order to complete the investigation within the statutory time limits, the Commission may limit the exporting producers to be investigated to a

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ An exporting producer is any company in the country concerned which produces and exports the product under investigation to the Union market, either directly or via third party, including any of its related companies involved in the production, domestic sales or exports of the product concerned.

reasonable number by selecting a sample (this process is also referred to as 'sampling'). The sampling will be carried out in accordance with Article 27 of the basic Regulation.

In order to enable the Commission to decide whether sampling is necessary, and if so, to select a sample, all exporting producers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission. These parties have to do so within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified, by providing the Commission with the following information on their company or companies:

- name, address, e-mail address, telephone and fax numbers and contact person,
 - the turnover in local currency and the volume in tonnes of the product under investigation sold for export to the Union during the investigation period ('IP') 1 April 2010 to 31 March 2011 for each of the 27 Member States ⁽³⁾ separately and in total,
 - the turnover in local currency and the volume in tonnes of the product under investigation sold on the domestic market during the IP 1 April 2010 to 31 March 2011,
 - the precise activities of the company worldwide with regard to the product under investigation,
 - the names and the precise activities of all related companies ⁽⁴⁾ involved in the production and/or sales (export and/or domestic) of the product under investigation,
- any other relevant information that would assist the Commission in the selection of the sample.

The exporting producers should also indicate whether, in the event that they are not selected to be in the sample, they would like to receive a questionnaire in order to fill it in and thus claim an individual subsidy margin in accordance with Section (b) below.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is selected to be part of the sample, this will imply completing a questionnaire and accepting a visit at its premises in order to verify its response ('on-spot verification'). If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The Commission's findings for non-cooperating exporting producers are based on facts available and the result may be less favourable to that party than if it had cooperated.

In order to obtain the information it deems necessary for the selection of the sample of exporting producers, the Commission will also contact the authorities of India and may contact any known associations of exporting producers.

All interested parties wishing to submit any other relevant information regarding the selection of the sample, excluding the information requested above, must do so within 21 days of the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

If a sample is necessary, the exporting producers may be selected based on the largest representative volume of exports to the Union which can reasonably be investigated within the time available. All known exporting producers, the authorities of India and associations of exporting producers will be notified by the Commission, via the authorities of India if appropriate, of the companies selected to be in the sample.

All exporting producers selected to be in the sample will have to submit a completed questionnaire within 37 days from the date of notification of the sample selection, unless otherwise specified.

The questionnaire will contain information on, inter alia, the structure of the exporting producer's company(ies), the activities of the company(ies) in relation to the product under investigation, the cost of production, the sales of the product under investigation on the domestic market of the country concerned and the sales of the product under investigation to the Union.

⁽³⁾ The 27 Member States of the European Union are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

⁽⁴⁾ In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife; (ii) parent and child; (iii) brother and sister (whether by whole or half blood); (iv) grandparent and grandchild; (v) uncle or aunt and nephew or niece; (vi) parent-in-law and son-in-law or daughter-in-law; (vii) brother-in-law and sister-in-law (OJ L 253, 11.10.1993, p. 1). In this context 'person' means any natural or legal person.

Companies that had agreed to their possible inclusion in the sample but were not selected to be in the sample shall be considered to be cooperating ('non-sampled cooperating exporting producers'). Without prejudice to Section (b) below, the countervailing duty that may be applied to imports from the non-sampled cooperating exporting producers will not exceed the weighted average margin of subsidisation established for the exporting producers in the sample.

(b) Individual subsidy margin for companies not included in the sample

Non-sampled cooperating exporting producers may request, pursuant to Article 27(3) of the basic Regulation, that the Commission establish their individual subsidy margins ('individual subsidy margin'). The exporting producers wishing to claim an individual subsidy margin must request a questionnaire in accordance with Section (a) above and return it duly completed within the deadlines specified below. The completed questionnaire reply must be submitted within 37 days of the date of the notification of the sample selection, unless otherwise specified.

However, exporting producers claiming an individual subsidy margin should be aware that the Commission may nonetheless decide not to determine their individual subsidy margin if, for instance, the number of exporting producers is so large that such determination would be unduly burdensome and would prevent the timely completion of the investigation.

5.1.2. Investigating unrelated importers ⁽⁵⁾ ⁽⁶⁾

In view of the potentially large number of unrelated importers involved in this proceeding and in order to complete the investigation within the statutory time limits, the Commission may limit to a reasonable number the unrelated importers that will be investigated by selecting a sample (this process is also referred to as 'sampling'). The sampling will be carried out in accordance with Article 27 of the basic Regulation.

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all unrelated importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission. These parties should do so within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified, by providing the Commission with the following information on their company or companies:

⁽⁵⁾ Only importers not related to exporting producers can be sampled. Importers that are related to exporting producers have to fill in Annex 1 to the questionnaire for these exporting producers. For the definition of a related party see footnote 4.

⁽⁶⁾ The data provided by unrelated importers may also be used in relation to aspects of this investigation other than the determination of subsidisation.

- name, address, e-mail address, telephone and fax numbers and contact person,
- the precise activities of the company with regard to the product under investigation,
- the total turnover during the period 1 April 2010 to 31 March 2011,
- the volume in tonnes and value in euro of imports into and resales made on the Union market during the period 1 April 2010 to 31 March 2011 of the imported product under investigation originating in the country concerned,
- the names and the precise activities of all related companies ⁽⁷⁾ involved in the production and/or sales of the product under investigation,
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is selected to be part of the sample, this will imply completing a questionnaire and accepting a visit at its premises in order to verify its response ('on-spot verification'). If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The Commission's findings for non-cooperating importers are based on the facts available and the result may be less favourable to that party than if it had cooperated.

In order to obtain the information it deems necessary for the selection of the sample of unrelated importers, the Commission may also contact any known associations of importers.

All interested parties wishing to submit any other relevant information regarding the selection of the sample, excluding the information requested above, must do so within 21 days of the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

If a sample is necessary, the importers may be selected based on the largest representative volume of sales of the product under investigation in the Union which can reasonably be investigated within the time available. All known unrelated importers and associations of importers will be notified by the Commission of the companies selected to be in the sample.

⁽⁷⁾ For the definition of a related party see footnote 4.

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled unrelated importers and to any known association of importers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified. The completed questionnaire will contain information on, inter alia, the structure of their company(ies), the activities of the company(ies) in relation to the product under investigation and on the sales of the product under investigation.

5.2. Procedure for the determination of injury

Injury means material injury to the Union industry, or threat of material injury to the industry, or material retardation of the establishment of such an industry. A determination of injury is based on positive evidence and involves an objective examination of the volume of the subsidised imports, their effect on prices in the Union market and the consequent impact of those imports on the Union industry. In order to establish whether the Union industry is materially injured, Union producers of the product under investigation are invited to participate in the Commission investigation.

5.3. Investigating Union producers

In view of the large number of Union producers involved in this proceeding and in order to complete the investigation within the set time limits, the Commission has decided to limit to a reasonable number the Union producers that will be investigated by selecting a sample (this process is also referred to as 'sampling'). The sampling is carried out in accordance with Article 27 of the basic Regulation.

The Commission has provisionally selected a sample of Union producers. Details can be found in the file for inspection by interested parties. Interested parties are hereby invited to consult the file (for this they should contact the Commission using the contact details provided in Section 5.6 below) and to comment on the appropriateness of this choice within 15 days of the date of publication of this notice in the *Official Journal of the European Union*.

All interested parties wishing to submit any relevant information regarding the selection of the sample must do so within 21 days of the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

All known Union producers and associations of Union producers will be notified by the Commission of the companies finally selected to be in the sample.

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled Union producers and to any known association of

Union producers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified. The completed questionnaire will contain information on, inter alia, the structure of their company(ies), the financial situation of the company(ies), the activities of the company(ies) in relation to the product under investigation, the cost of production and the sales of the product under investigation.

5.4. Procedure for the assessment of Union interest

Should the existence of subsidisation and injury caused thereby be established, a decision will be reached, pursuant to Article 31 of the basic Regulation, as to whether the adoption of countervailing measures would be against the Union interest. Union producers, importers and their representative associations, users and their representative associations, and representative consumer organisations are invited to make themselves known within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. In order to participate in the investigation, the representative consumer organisations have to demonstrate, within the same deadline, that there is an objective link between their activities and the product under investigation.

Parties that make themselves known within the above deadline may provide the Commission with information on the Union interest within 37 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. This information may be provided either in a free format or by completing a questionnaire prepared by the Commission. In any case, information submitted pursuant to Article 31 will only be taken into account if supported by factual evidence at the time of submission.

5.5. Other written submissions

Subject to the provisions of this notice, all interested parties are hereby invited to make their views known, submit information and provide supporting evidence. Unless otherwise specified, this information and supporting evidence should reach the Commission within 37 days of the date of publication of this notice in the *Official Journal of the European Union*.

5.6. Possibility to be heard by the Commission investigation services

All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this notice in the *Official Journal of the European Union*. Thereafter, a request to be heard should be submitted within the specific deadlines set by the Commission in its communication with the parties.

5.7. Instructions for making written submissions and sending completed questionnaires and correspondence

All submissions, including information submitted for the selection of the samples, completed questionnaires and updates thereof, made by interested parties must be made in writing in both paper and electronic format, and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. If an interested party cannot provide its submissions and requests in electronic format for technical reasons, it must immediately inform the Commission.

All written submissions, including the information requested in this notice, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' ⁽⁸⁾.

Interested parties providing 'Limited' information are required to furnish non-confidential summaries of it pursuant to Article 29(2) of the basic Regulation, which will be labelled 'For inspection by interested parties'. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such confidential information may be disregarded.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: N105 04/092
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Fax +32 22956505

6. Non-cooperation

In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 28 of the basic Regulation.

⁽⁸⁾ A 'Limited' document is a document which is considered confidential pursuant to Article 29 of Council Regulation (EC) No 597/2009 (OJ L 188, 18.7.2009, p. 93) and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures. It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 28 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

7. Hearing Officer

Interested parties may request the intervention of the Hearing Officer of Directorate-General for Trade. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes on the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised.

A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this notice in the *Official Journal of the European Union*. Thereafter, a request to be heard must be submitted within specific deadlines set by the Commission in its communication with the parties.

The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments offered on issues pertaining, among others, to subsidisation, injury, causal link and Union interest. Such a hearing would, as a rule, take place at the latest at the end of the fourth week following the disclosure of provisional findings.

For further information and contact details interested parties may consult the Hearing Officer's web pages on Trade DG's website (http://ec.europa.eu/trade/issues/respectrules/ho/index_en.htm).

8. Schedule of the investigation

The investigation will be concluded, according to Article 11(9) of the basic Regulation, within 13 months of the date of the publication of this notice in the *Official Journal of the European Union*. According to Article 12(1) of the basic Regulation, provisional measures may be imposed no later than nine months from the publication of this notice in the *Official Journal of the European Union*.

9. Processing of personal data

Any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽⁹⁾.

⁽⁹⁾ OJ L 8, 12.1.2001, p. 1.