

## Notice of initiation of an anti-subsidy proceeding concerning imports of certain stainless steel fasteners and parts thereof originating in India and Malaysia

(2009/C 190/08)

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 (the basic Regulation) <sup>(1)</sup>, alleging that imports of certain stainless steel fasteners and parts thereof, originating in India and Malaysia (the countries concerned), are being subsidised and are thereby causing material injury to the Community industry.

### 1. Complaint

The complaint was lodged on 30 June 2009 by the European Industrial Fasteners Institute (the complainant) on behalf of producers representing a major proportion, in this case more than 25 %, of the total Community production of stainless steel fasteners and parts thereof.

### 2. Product

The product allegedly being subsidised is stainless steel fasteners and parts thereof, originating in India and Malaysia (the product 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 only for information.

### 3. Allegation of subsidisation

It is alleged that the producers of the product concerned from India have benefited from a number of subsidies granted by the government of India and from regional subsidies. These subsidies consist of the advance authorisation scheme, the duty-free import authorisation scheme, the duty entitlement passbook scheme, the duty drawback scheme, the export promotion capital goods scheme, the export credit scheme, income tax exemption, schemes conferring benefits to industries located in special economic zones/export oriented units, the focus market scheme, and the package scheme of incentives of the government of Maharashtra.

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 exporters/producers of stainless steel fasteners and parts thereof. 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.

It is alleged that the producers of the product concerned from Malaysia have benefited from a number of subsidies granted by the government of Malaysia. These subsidies consist of the double deduction for export promotion expenses, the single deduction for the promotion of exports, the double deduction

on export credit insurance premium, the increased exports allowance, the tax exemption on the value of increased exports, the tax deduction for acquisition of a foreign company, the pioneer status, the enhanced pioneer status, the investment tax allowance, the licensed manufacturing warehouse, the free zones, the principal customs area, and the export credit refinancing scheme.

It is alleged that the above schemes are subsidies since they involve a financial contribution from the government of Malaysia and confer a benefit to the recipients, i.e. to exporters/producers of stainless steel fasteners and parts thereof. 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 concerned from India and Malaysia have increased overall in absolute terms and in terms of market share.

It is alleged that the volumes and the prices of the imported product concerned have, among other consequences, had a negative impact on the market share held, the quantities sold and the level of prices charged by the Community industry, resulting in substantial adverse effects on the overall performance, and in particular on the profitability of the Community industry.

### 5. Procedure

Having determined, after consulting the Advisory Committee, that the complaint has been lodged by or on behalf of the Community 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.

#### 5.1. Procedure for the determination of subsidisation and injury

The investigation will determine whether the product concerned originating in India and Malaysia is being subsidised and whether this subsidisation has caused injury.

##### (a) Sampling

In view of the apparent large number of parties involved in this proceeding, the Commission may decide to apply sampling in accordance with Article 27 of the basic Regulation.

<sup>(1)</sup> OJ L 188, 18.7.2009, p. 93.

## (i) Sampling for exporters/producers in India and Malaysia

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all exporters/producers in India and Malaysia, or representatives acting on their behalf, are hereby requested to make themselves known by contacting the Commission and providing the following information on their company or companies within the time limit set in point 6(b)(i) and in the format indicated in point 7:

- 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 concerned sold for export to the Community during the period 1 July 2008 to 30 June 2009;
- the turnover in local currency and the sales volume in tonnes for the product concerned sold on the domestic market during the period 1 July 2008 to 30 June 2009;
- the precise activities of the company worldwide with regard to the product concerned;
- the names and the precise activities of all related companies<sup>(2)</sup> involved in the production and/or selling (export and/or domestic) of the product concerned;
- 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 chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. 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 consequences of non-cooperation are set out in point 8 below.

In order to obtain the information it deems necessary for the selection of the sample of exporters/producers, the Commission will, in addition, contact the authorities of the exporting country, and any known associations of exporters/producers.

Since a company cannot be certain that it will be selected in the sample, exporters/producers that wish

to claim an individual amount of countervailable subsidisation pursuant to Article 27(3) of the basic Regulation are advised to request a questionnaire within the deadline foreseen in point 6(a)(i) of this notice and file it within the deadline foreseen in point 6(a)(ii) first paragraph of this notice. However, attention is drawn to the last sentence of point 5(b) of this notice.

## (ii) Sampling for importers

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission and to provide the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers and contact person;
- the total turnover in euro of the company during the period 1 July 2008 to 30 June 2009;
- the total number of employees;
- the precise activities of the company with regard to the product concerned;
- the volume in tonnes and value in euro of imports into and resales made on the Community market during the period 1 July 2008 to 30 June 2009 of the imported product concerned originating in India and Malaysia;
- the names and the precise activities of all related companies<sup>(3)</sup> involved in the production and/or selling of the product concerned;
- 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 chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. 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 consequences of non-cooperation are set out in point 8 below.

<sup>(2)</sup> For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

<sup>(3)</sup> See footnote 2.

In order to obtain the information it deems necessary for the selection of the sample of importers, the Commission will, in addition, contact any known associations of importers.

### (iii) Sampling for Community producers

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all Community producers, or representatives acting on their behalf, are hereby requested to provide the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers, and contact person;
- the total turnover in euro of the company during the period 1 July 2008 to 30 June 2009;
- the precise activities of the company worldwide with regard to the product concerned;
- the value in euro of sales of the product concerned made in the Community market during the period 1 July 2008 to 30 June 2009;
- the volume in tonnes of sales of the product concerned made in the Community market during the period 1 July 2008 to 30 June 2009;
- the volume in tonnes of the production of the product concerned during the period 1 July 2008 to 30 June 2009;
- the names and the precise activities of all related companies<sup>(4)</sup> involved in the production and/or selling of the product concerned;
- 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 chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. 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 consequences of non-cooperation are set out in point 8 below.

### (iv) Final selection of the samples

All interested parties wishing to submit any relevant information regarding the selection of the sample must do so within the time limit set in point 6(b)(ii).

The Commission intends to make the final selection of the samples after having consulted the parties concerned that have expressed their willingness to be included in the sample.

Companies included in the samples must reply to a questionnaire within the time limit set in point 6(b)(iii) and must cooperate within the framework of the investigation.

If sufficient cooperation is not forthcoming, the Commission may base its findings, in accordance with Articles 27(4) and 28 of the basic Regulation, on the facts available. A finding based on facts available may be less advantageous to the party concerned, as explained in point 8.

### (b) Questionnaires

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled Community industry and to any known association of producers in the Community, to the sampled exporters/producers in India and Malaysia, to any known association of exporters/producers in the countries concerned, to the sampled importers, to any known association of importers, and to the authorities of the exporting countries concerned.

Exporters/producers in India and Malaysia claiming an individual amount of countervailable subsidisation, with a view to the application of Articles 27(3) and 15(3) of the basic Regulation, must submit a completed questionnaire within the time limit set in point 6(a)(ii) of this notice. They therefore have to request a questionnaire within the time limit set in point 6(a)(i). However, such parties should be aware that if sampling is applied to exporters/producers, the Commission may, nonetheless, decide not to calculate an individual amount of countervailable subsidisation for them if the number of exporters/producers is so large that individual examination would be unduly burdensome and would prevent the timely completion of the investigation.

### (c) Collection of information and holding of hearings

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies and to provide supporting evidence. This information and supporting evidence has to reach the Commission within the time limit set in point 6(a)(ii).

<sup>(4)</sup> See footnote 2.

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in point 6(a)(iii).

## 5.2. Procedure for the assessment of Community interest

In accordance with Article 31 of the basic Regulation and in the event that the allegations of subsidisation and injury caused thereby are substantiated, a decision will be reached as to whether the adoption of countervailing measures would not be against the Community interest. For this reason the Commission may send questionnaires to any known Community industry, importers, their representative associations, representative users and representative consumer organisations. Such parties, including those not known to the Commission, provided that they prove that there is an objective link between their activity and the product concerned, may, within the general time limits set in point 6(a)(ii), make themselves known and provide the Commission with information. The parties which have acted in conformity with the preceding sentence may request a hearing setting the particular reasons why they should be heard within the time limit set in point 6(a)(iii). It should be noted that any information submitted pursuant to Article 31 of the basic Regulation will only be taken into account if supported by factual evidence at the time of submission.

## 6. Time limits

### (a) General time limits

#### (i) For parties to request a questionnaire

All interested parties should request a questionnaire as soon as possible, but not later than 10 days after the publication of this notice in the *Official Journal of the European Union*.

#### (ii) For parties to make themselves known, to submit questionnaire replies and any other information

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views and submit questionnaire replies or any other information within 40 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the parties making themselves known within the aforementioned period.

Companies selected in a sample must submit questionnaire replies within the time limits specified in point 6(b)(iii).

### (iii) Hearings

All interested parties may also apply to be heard by the Commission within the same 40-day time limit.

### (b) Specific time limit in respect of sampling

(i) The information specified in points 5.1(a)(i), 5.1(a)(ii) and 5.1(a)(iii) should reach the Commission within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, given that the Commission intends to consult parties concerned that have expressed their willingness to be included in the sample on its final selection within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

(ii) All other information relevant for the selection of the sample as referred to in point 5.1(a)(iv) must reach the Commission within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

(iii) The questionnaire replies from sampled parties must reach the Commission within 37 days from the date of the notification of their inclusion in the sample.

## 7. Written submissions, questionnaire replies and correspondence

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this notice, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' <sup>(5)</sup> and, in accordance with Article 29(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

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<sup>(5)</sup> This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 29 of the basic Regulation and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures.

## 8. Non-cooperation

In cases in which 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 in accordance with Article 28 of the basic Regulation, on the basis of the facts available.

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

## 9. 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*.

## 10. Processing of personal data

It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and the of Council of 18 December 2000 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 <sup>(6)</sup>.

## 11. Hearing Officer

It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the hearing officer of Directorate-General for Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details interested parties may consult the hearing officer's web pages of the website of Directorate-General for Trade (<http://ec.europa.eu/trade>).

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<sup>(6)</sup> OJ L 8, 12.1.2001, p. 1.