

Commission Implementing 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

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THE EUROPEAN COMMISSION,

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

Having regard to 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'), and in particular Article 15 thereof,

Whereas:

1. **PROCEDURE**

1.1. **Initiation**

- (1) On 11 March 2015, the European Commission ('the Commission') initiated an anti-subsidy investigation with regard to imports into the Union of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India ('the country concerned') on the basis of Article 10 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union*⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 26 January 2015 by Saint-Gobain PAM Group, ('the complainant') on behalf of producers representing more than 25 % of the total Union production of tubes and pipes of ductile cast iron. The complaint contained prima facie evidence of subsidisation and of resulting material injury that was sufficient to justify the initiation of the investigation.
- (3) Prior to the initiation of the proceedings and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Government of India ('the GoI') that it had received a properly documented complaint alleging that subsidised imports of tubes and pipes of ductile cast iron originating in India were causing material injury to the Union industry. The GoI was invited for consultations with the aim of clarifying the situation as regards the content of the complaint and arriving at a mutually agreed solution. The GoI accepted the offer of consultations and consultations were subsequently held. During the consultations, no mutually agreed solution could be arrived at.

Changes to legislation: There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/387. (See end of Document for details)

1.2. Subsequent procedure

(4) Subsequently, the Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive countervailing duty on imports into the Union of tubes and pipes of ductile cast iron originating in India. In addition another Indian Producer Tata Metaliks DI Pipes Limited ('Tata') made themselves known and provided comments.

(5) All parties were granted a period within which they could make comments on the disclosure.

(6) On 28 January 2016 a hearing with the Hearing Officer for Trade was held at the request of Electrosteel Castings Limited.

1.3. Parallel anti-dumping proceeding

(7) On 20 December 2014, the Commission published a notice in *Official Journal of the European Union*⁽³⁾ on the initiation of an anti-dumping investigation against imports into the Union of tubes and pipes of ductile cast iron originating in India based on Council Regulation (EC) No 1225/2009⁽⁴⁾ ('the basic anti-dumping Regulation').

(8) On 18 September 2015, by Commission Implementing Regulation (EU) 2015/1559⁽⁵⁾, the Commission imposed a provisional anti-dumping duty on imports of tubes and pipes of ductile cast iron originating in India ('provisional anti-dumping Regulation'). The definitive findings of that investigation are subject to a separate Regulation⁽⁶⁾.

(9) The injury, causation and Union interest analyses performed in the present anti-subsidy and the parallel anti-dumping investigation are *mutatis mutandis* identical, since the definition of the Union industry, the representative Union producers and the investigation period are the same in both investigations.

1.4. Interested parties

(10) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In particular, the Commission informed the complainant, other known Union producers, the known exporting producers and the Indian authorities, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(11) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. No interested party requested a hearing to comment on the initiation.

1.5. Sampling

(12) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

1.5.1. *Sampling of Union producers and importers*

(13) No sampling of Union producers was necessary. There are only three companies or group of companies manufacturing the product concerned in the Union and two of them, representing around 96 % of the total Union production, cooperated with the investigation.

(14) As regards unrelated importers, 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 Initiation. No unrelated importers made themselves known within the time limits set out in the Notice of Initiation.

1.5.2. *Sampling of exporting producers in India*

(15) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in India to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the Republic of India to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(16) Three exporting producers in the country concerned provided the requested information and agreed to be included in the sample. They covered 100 % of the exports from India during the investigation period. Therefore, the Commission decided that sampling was not necessary.

1.6. **Questionnaire replies and verification visits**

(17) Questionnaires were sent to three exporting producers or groups of producers in India, to the three Union producers as well as to users that made themselves known within the time limits set out in the Notice of Initiation.

(18) Questionnaire replies were received from two out of the three Indian exporting producers. The Commission therefore considered that the third exporting producer ceased cooperation with the investigation.

(19) At initiation stage, the cooperating Union producers and users agreed that the information collected in the parallel anti-dumping investigation could also be used in this proceeding. Several dozen users submitted information in addition to those which had already made themselves known in the parallel anti-dumping investigation.

(20) The Commission sought and verified all the information provided by the exporting producers in India and deemed necessary for a provisional determination of subsidisation. Verification visits were carried out at the following companies:

- Electrosteel Castings Ltd, Kolkata, India ('ECL'),
- Jindal Saw Limited, New Delhi, India ('Jindal').

1.7. **Investigation period and period considered**

- (21) The investigation of subsidy and injury covered the period from 1 October 2013 to 30 September 2014 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the investigation period ('the period considered').

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

- (22) The product concerned is tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) ('ductile pipes') originating in India, currently falling within CN codes ex 7303 00 10 and ex 7303 00 90. These CN codes are given for information only.

- (23) Ductile pipes are used for drinking water supply, sewage disposal and irrigation of agricultural land. The transportation of water through ductile pipes may be based on pressure or solely on gravity. The pipes range between 60 mm and 2 000 mm and are 5,5, 6, 7 or 8 metres long. They are normally lined with cement or other materials and externally zinc-coated, painted or tape-wrapped. The main final users are public utility companies.

- (24) Jindal and the Government of India ('GOI') claimed that ductile pipes, which are not coated, neither internally nor externally ('bare pipes'), should be excluded from the product concerned on the basis that such tubes and pipes are semi-finished products with different physical, technical and chemical characteristics and cannot be used for conveying water without further processing. Bare pipes are also not interchangeable with the product concerned and have a different end-use.

- (25) The complainant contested this claim and argued that all ductile pipes, whether coated or not, share the same basic physical, technical and chemical characteristics and have the same end-use. The complainant further argued that internal and external coating operations are considered as finishing operations, representing only up to 20 % of the total cost of production of ductile pipes, and do not alter the basic characteristics of a ductile pipe. The complainant further stressed that bare pipes as such have no effective end-market/function or use, other than conveying water and sewage, and are not sold on the Union market but must necessarily be coated before being put on the market and to comply with EU standards. In addition, bare pipes of ductile cast iron fall under the same customs code as coated pipes and their exclusion could therefore lead to circumvention of any countervailing measures and undermine the effectiveness of such measures given the Indian exporters' significant capacity to carry out coating in the Union (around 80 000 tonnes annually). In this regard, the complainant further claimed that the Indian imports of bare pipes have increased significantly since 2013 and these imports were almost three times higher in 2015 than in 2013. This trend is likely to continue in the complainant's view.

- (26) The investigation has demonstrated that bare pipes do not have any effective market function/use and are not sold as such on the Union market. These pipes must necessarily undergo further processing, i.e. internal and external coating, before

becoming marketable and fulfilling EU standards for conveying water and sewage. While compliance with EU standards is not necessarily a decisive factor for determining the product scope, the fact that additional processing must be carried out on a bare pipe before it can be put into its intended end-use, is a factor that cannot be overlooked when analysing whether a bare pipe is a final product or a semi-finished product only. The Commission therefore finds that bare pipes of ductile cast iron should be considered as semi-finished ductile pipes.

- (27) Semi-finished goods and finished goods may nevertheless be considered to form a single product if: (i) they share the same essential characteristics; and (ii) the additional processing costs are not substantial⁽⁷⁾. It is uncontested that the internal and external coating adds to bare pipes a physical characteristic which confers on these pipes an essential and basic characteristic required for their essential use on the Union market, namely the conveyance of water and sewage in accordance with EU standards. Moreover, it is uncontested that the cost for adding internal and external coating to a bare pipe normally accounts for up to 20 % of the total production costs of a ductile pipe. Accordingly, the additional processing must be considered substantial.
- (28) It follows that semi-finished bare tubes and pipes of ductile cast iron cannot be considered forming a single product with the finished (coated internally and externally) ductile pipes and should therefore be excluded from the product concerned.
- (29) Moreover, the Commission did not find that there is a considerable risk of circumvention should bare pipes be excluded from the product scope. The bare pipes are only imported by one related company of Jindal which, contrary to the claim by the complainant, has limited coating capacity in the Union. According to the Commission's verified data the actual capacity is around 15 000 tonnes annually. Moreover, although the imports of bare pipes from India appear to be increasing after the investigation period, the volumes are still modest (less than 10 000 tonnes in 2015) according to information from the complainant. Given the limited coating capacity by the related company in the Union and its current business plan for the forthcoming years in respect of bare pipes, between 15 000 and 21 000 tonnes by 2017, it is unlikely that this production site would be turned into an entry gate for a massive influx of bare pipes with the sole objective to coat them in order to avoid duties for finished pipes in the Union, which could potentially raise an issue under Article 23 of the basic Regulation.
- (30) Jindal requested that flanged pipes of ductile cast iron should be excluded from the product scope.
- (31) Contrary to bare pipes, flanged pipes are pipes of ductile cast iron finally processed with internal and external coating. Flanged pipes are therefore suitable for the conveyance of water and sewage without further processing. Essentially, they are cut in length from full length iron ductile pipes and fitted with flanges to be connected with bolts and nuts while other pipes of ductile iron are connected via a socket. The processing costs for cutting the length and adding flanges cannot be considered to change the basic characteristics of a ductile iron pipe, which is the conveyance of water and sewage or incurring substantive processing costs. Therefore, although some