COUNCIL REGULATION (EC) No 1600/1999

of 12 July 1999

imposing definitive anti-dumping duties and collecting definitively the provisional duties imposed on imports of stainless steel wires with a diameter of 1 mm or more originating in India and terminating the proceeding concerning imports of stainless steel wires with a diameter of 1 mm or more originating in the Republic of Korea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] and in particular Article 9 thereof,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [2] and in particular Article 24 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

(A) PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 617/1999 [3] (hereinafter referred to as the 'provisional Regulation') imposed provisional anti-dumping duties on imports of stainless steel wires with a diameter of 1 mm or more (hereinafter referred to as 'large SSW' or 'product concerned'), originating in India, and falling within CN code ex 7223 00 19.

(2) In the same Regulation, it was provisionally concluded that no anti-dumping duty should be imposed on imports of the product concerned originating in Korea covered by the same investigation, due to the dumping margins established which were either *de minimis* or very close to *de minimis*.

(B) SUBSEQUENT PROCEDURE

(3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional measures on imports of large SSW originating in India (hereinafter referred to as 'disclosure'), several interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the parties were considered, and, where deemed appropriate, the provisional findings have been modified accordingly.

(C) PRODUCT CONCERNED AND LIKE PRODUCT

(7) The product concerned is large SSW, containing by weight 2,5 % or more of nickel, other than containing by weight 28 % or more but no more than 31 % of nickel and 20 % or more but not more than 22 % of chromium.

(8) It was found at the provisional stage of the investigation that there were differences in physical characteristics and uses between SSW covered by the present investigation, i.e. with a diameter of 1 mm or more (large wire) and SSW with a diameter of less than 1 mm (fine wire). For these reasons, it also appeared that there was no or only very limited interchangeability between large and fine wires' applications. However, it was also stated in the provisional Regulation that the question whether a clear dividing line could be drawn between these two products was going to be further investigated up to the definitive stage.

(9) On the basis of the further information collected from interested parties, it is concluded that large wire and fine wire are two different products as they present different physical characteristics and are used for different applications. Firstly, as to the physical characteristics, the tensile strength, granular structure and coating of SSW are different for large and fine wires. Secondly, as regards the various applications of the two products, it has been found that large wire is used for heavier duty engineering applications such as fasteners, wall reinforcement products, welding wires, etc. By contrast, fine wire is as a rule used for precision applications such as screens and filters (woven wire cloth) with small openings for filtering very fine or small particles (for example dust filters and chemical filters), medical/surgical applications, etc.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).
[2] OJ L 288, 21.10.1997, p. 1.
[3] OJ L 79, 24.3.1999, p. 13.

(10) On the basis of the above it is concluded that fine and large wires are two different products which have different characteristics and applications and that they are not interchangeable from the point of view of SSW users.

(11) In view of the above and since no arguments were put forward by any of the parties concerned with respect to the Commission's provisional findings on the product concerned and the considerations made on the like product, the facts and findings as set out in recitals 7 to 11 of the provisional Regulation, are hereby confirmed.

(D) **DUMPING**

1. **Korea**

(12) Since no arguments have been put forward by any interested party and the investigation has not led to any different conclusion, the provisional findings as set out in recital 23(b) of the provisional Regulation are hereby confirmed, i.e. the dumping margins established for the Korean exporting producers concerned are *de minimis* except for two exporting producers. Furthermore, the weighted average country-wide dumping margin for all the exporting producers investigated which represent the totality of exports of large SSW to the Community originating in Korea expressed as a percentage of the CIF price at Community frontier level is *de minimis*, i.e. under 2 %. Under these circumstances, the dumping margin for Korea has to be considered negligible in accordance with Article 9(3) of the Basic Regulation.

2. **India**

(a) *Normal value*

(13) Several Indian exporting producers argued that the average profit margins used to determine the constructed normal value were unreasonable, in particular because they were substantially higher than the profit margin of 5 % which was mentioned in recital 79 of the provisional Regulation as a reasonable profit rate for the Community industry in the determination of the non-injurious price. These exporting producers claimed that the company-wide profit margin during the investigation period, i.e. a global figure including both the product concerned and other products, should be used to determine the constructed normal value. In the case of non-profitable companies, it was claimed that the average of the company-wide profit margins of profitable companies in India should be used to determine the constructed normal value.

(14) As an alternative to the above it was requested that the average profit be calculated for each company concerned on the basis of all domestic sales, i.e. sales of both profitable and unprofitable product types, and not only on the basis of domestic sales of profitable product types.

(15) In this respect it should be noted that, pursuant to Article 2(6) of Council Regulation (EC) No 384/96 (hereinafter referred to as 'Basic Regulation'), the amount for profits has to be based on data pertaining to production and sales, in the ordinary course of trade, of the like product in the domestic market of the exporting country. In this context sales below cost of a particular product type can only be taken into account for the determination of the profit margin if the volume of non-profitable sales of such type is not higher than 20 % of all sales of the type in question. The above rule has been respected when determining the profit margin used in the determination of the constructed normal value.

(16) Therefore, the claims concerning the profit margin used to determine constructed normal value were rejected.

(17) One Indian exporting producer claimed that account should be taken of the goods-in-process stock variation in the determination of the constructed normal value. This claim was granted since the evidence finally submitted was sufficient.

(18) Two Indian exporting producers which sustained losses throughout the investigation period claimed, pursuant to Article 2(5) of the basic Regulation, that these losses had occurred during the start-up phase and that this situation should be taken into account. However, since none of these two companies met the criteria set in Article 2(5) of the basic Regulation, the adjustment could not be granted.

(19) In the absence of any other arguments concerning the determination of the normal value, the findings set out in recitals 12 and 13 of the provisional Regulation are otherwise confirmed.

(b) *Export price*

(20) In the absence of any new arguments concerning the determination of the export price, the findings set out in recitals 14 to 16 of the provisional Regulation are hereby confirmed.

(c) *Comparison*

(21) One Indian exporting producer requested that the credit cost incurred by its related importer be determined on the basis of the payment terms granted by the latter to its first independent customer in the Community instead of on the basis of the payment terms agreed between the parent company and the related importer. This request was accepted and the credit cost determination amended accordingly.

(22) In the absence of any other arguments concerning the adjustments made in order to allow for a fair comparison, the provisional findings set out in recitals 17 to 19 of the provisional Regulation are hereby confirmed.

(d) *Dumping margins*

(23) In the absence of any new arguments concerning the determination of the dumping margin, the findings set out in recitals 20 to 22 of the provisional Regulation are hereby confirmed. On this basis, the dumping margins, expressed as a percentage of the cif price at Community frontier level, are:

Bhansali Bright Bars Pvt., Ltd	1,2 %
Devidayal India Ltd	27,5 %
Hindustan Stainless Steel Wire Co., Pvt Ltd	76,2 %
Indore Wire Co., Ltd	35,8 %
Isibars Ltd/Isinox Steels Ltd	11,4 %
Kei Industries Ltd	76,2 %
Macro Bars & Wires Pvt., Ltd	21,9 %
Mukand Ltd	23,3 %
Raajratna Metal Industries Ltd	16,0 %
Triveni Shinton International Ltd	68,2 %
Venus Wire Industries Ltd	6,6 %

(E) **INJURY**

1. **Community industry**

(24) In the absence of new evidence or any further substantiated argument put forward by any of the parties concerned, the facts and findings set out in recitals 24 and 25 of the provisional Regulation are confirmed, i.e the complainant Community producers representing more than 65 % of the total Community production of large SSW constitute the Community industry, in accordance with Article 4(1) of the basic Regulation.

2. **Competition aspects**

(25) In their comments following the disclosure, the Indian exporting producers reiterated their claim that all data submitted by the Community industry within the framework of the current proceeding would be artificially inflated as a result of the uniform application of the 'alloy surcharge' system, and that it would, therefore, not be possible to conduct any accurate injury analysis within the framework of the anti-dumping proceeding. Since no new arguments have been put forward by any interested party and there has been a definitive decision of the Commission rejecting the complaint on the case No IV/E-l/36.930 concerning stainless steel bright bars, which belong to the same category of products as SSW, the findings set out in recitals 27 of the provisional Regulation are hereby confirmed.

3. **Community consumption**

(26) Following disclosure, some interested parties have argued that the methodology followed for the purpose of determining the Community consumption, in particular with regard to the sales of non-cooperating Community producers and third countries imports, was inappropriate.

(27) In this respect, it should be recalled that detailed and verified data are only available for the Community industry and the cooperating exporting producers in the countries concerned. Therefore, in line with the consistent practice of the Community institutions, recourse was made to information available to the Commission, and in particular to independent statistical sources. No interested party has provided information that would show that the approach followed by the Community institutions was unreasonable and not justified in the circumstances of the present case.

(28) Consequently, the findings as set out in recitals 28 and 29 of the provisional Regulation are confirmed.

4. **Import volume and market shares of the dumped imports**

(29) Since no new arguments were put forward by any interested party, the findings detailed in recitals 30 and 31 of the provisional Regulation are hereby confirmed.

5. **Prices of the dumped imports**

(30) Some interested parties contested the methodology used by the Commission at the provisional stage for the calculation of price undercutting margins. They claimed that these margins were inflated because any negative amount by which the exporting producers' prices undercut those of the Community industry were not offset with any positive amounts.

(31) It should be noted that in the methodology described in recitals 33 and 34 of the provisional Regulation for the calculation of the price undercutting margins the weighted average net sales prices of the dumped imports were compared, on a model-by-model basis, with the weighted average net sales price by model of the Community industry in the Community market. Therefore, this methodology allowed, on a per model basis, to take into account the amount by which the exporting producers' price of an export transaction exceeded that of the Community industry's weighted average price. The argument was therefore rejected.

(32) In the absence of any other comments, the conclusions reached in recitals 32 to 35 of the provisional Regulation are hereby confirmed.

6. **Situation of the Community industry**

(33) Since no arguments were put forward by any interested party as to the provisional findings concerning the economic indicators relating to the situation of the Community industry, the findings as set out in recitals 36 to 43 of the provisional Regulation are confirmed.

(34) Some interested parties have argued that the economic indicators of the Community industry did not allow the conclusion that this industry was materially injured. Indeed, they argued that the situation of the Community industry remained relatively stable during the period under consideration, and even showed signs of improvement in terms of production, sales volume and investments. As to profitability, its decreasing trend should be explained by the decision of the Community industry to concentrate on products generating higher costs of production.

(35) As set out in recitals 44 and 45 of the provisional Regulation, it is recalled that the conclusion of material injury of the Community industry was based on the fact that the Community industry, faced to dumped imports, could not follow the growing trend of the market, did never recover its position on the market but was only able to keep its sales volume stable at the expense of its profitability which, in a context of depressed sales prices, strongly deteriorated. Indeed, the sales volume of the Community industry only increased by 5 % between 1994 and the investigation period, whilst the Community market went up by 20 % during the same period. Furthermore, the slight increase of production and investment reflect the fact that the Community industry tried to keep its market share in a significantly growing market. Thus, the decreasing trend of its profitability is not exclusively due, if at all, to the fact that the Community industry started to produce also some models for which less competition from the dumped imports was faced.

(36) On the basis of the above, it is concluded that the Community industry is suffering material injury as set out in recitals 44 and 45 of the provisional Regulation.

(F) **CAUSATION**

(37) Following the adoption of the provisional Regulation, some interested parties questioned whether the injury suffered by the Community industry was caused by the dumped imports. In particular, it was alleged that the injury was caused by other factors, namely by Community producers which are not part of the Community industry as defined above. It was argued in this respect that in view of the limited cooperation obtained from the Community producers, the assessment of the impact of sales by the non cooperating Community producers was not fully reliable.

(38) In view of the transparency and the price sensitivity of the SSW market in the Community, it is not unreasonable to conclude that other Community producers are likely to have followed a trend similar to that found for the Community industry, in particular as regards prices. Furthermore, no interested party has submitted any information that would suggest that the non-complaining producers operated in a more positive context. Thus, the argument should be rejected and the findings set out in recital 50 of the provisional Regulation are hereby confirmed, i.e. the other Community producers have not contributed to the injury suffered by the Community industry.

(39) In the light of the above, the findings set out in the provisional Regulation in recitals 46 to 59 are hereby confirmed, i.e that the low-priced dumped imports originating in India have caused material injury to the Community industry.

(G) **COMMUNITY INTEREST**

(40) Following the adoption of the provisional Regulation, comments have been submitted by users with respect to the potential effect of the duties.

(41) As to the Community industry and other Community producers, in the absence of any further submissions regarding the impact of the duties on their situation, the conclusion is hereby confirmed that the imposition of measures are likely to enable the Community industry to regain a satisfactory profitability, and to maintain and further develop its activities in the Community securing both employment and investment.

(42) In the absence of any further reaction from unrelated importers and from the suppliers, the findings set out in recitals 66 to 70 of the provisional Regulation are hereby confirmed.

(43) Concerning the users, some companies have alleged that the imposition of measures would have a direct impact on their economic situation since it would lead to an increase of the price of their raw material. However, they have also stated that, apart from India, there are other sources of supply outside the Community. Furthermore, in view of the overall low level of the duties, the impact of any price increase would be limited.

(44) Other users have insisted on the quality and reliability of the Community industry's products, considering therefore that the imposition of the measures would not affect their own situation.

(45) Therefore, the findings set out in recitals 60 to 77 of the provisional Regulation are confirmed in the sense that there are no compelling reasons against the imposition of anti-dumping duties.

(H) DEFINITIVE COURSE OF ACTION

1. **Korea**

(46) In the light of the above findings that the country-wide weighted average dumping margin for imports originating in Korea is *de minimis*, the proceeding concerning imports of large SSW originating in Korea should be terminated in accordance with Article 9(3) of the Basic Regulation.

2. **India**

(47) Based on the above conclusions on dumping, injury, causal link and Community interest, it was considered what form and level the definitive anti-dumping measures would have to take in order to remove the effects of injurious dumping.

(48) Accordingly, as explained in recital 79 of the provisional Regulation a non-injurious level of prices was calculated at a level which covers the Community industry's cost of production and a reasonable return on sales.

(49) The comparison of the non-injurious price levels at the same level of trade with the export price of the producers led to injury margins which ranged from around 20 % to more than 50 % expressed as a percentage of the free-at-Community-frontier import price level. For three Indian exporting producers this margin was below the dumping margins.

(50) The finding set out in recital 83 of the provisional Regulation is hereby confirmed, i.e. all of the schemes investigated have been found to constitute export subsidies within the meaning of Article 3(4)(a) of the above Regulation (EC) No 2026/97. As such, the subsidies can affect the export prices of the Indian exporting producers, thus leading to increased margins of dumping. Therefore, and as stated in recitals 80 to 82 of the provisional Regulation, the anti-dumping duties need to be adjusted to reflect the actual dumping margins remaining after the imposition of the countervailing duties offsetting the effect of the export subsidies.

(51) On the basis of the above, the definitive duty rates, expressed as a percentage of the cif Community border price, customs duty unpaid, taking into account the results of the parallel anti-subsidy proceeding, are as follows:

Company	Antidumping duty (%)
Bhansali	0
Devidayal	2,4
Indore Wire	16,5
Isibars/Isinox	0
Kei Industries	32,6
Macro Bars	0
Mukand	10,1
Raajratna	0
Triveni	55,6
Venus Wire	0

(52) As far as other exporting producers are concerned, in view of the high level of cooperation found, the highest company-specific anti-dumping duty found should be applied. This was found to be 55.6 %. This duty was not adjusted within the meaning of Article 24(1) of the above Regulation (EC) No 2026/97 since the company on the basis of which it was established, i.e. Triveni, was not found to have received any countervailable export subsidies.

(53) The individual duty rates specified in this Regulation were established on the basis of the findings of the present anti-dumping investigation. Therefore, they reflect the situation found during that investigation. These duty rates are thus exclusively applicable to imports of products originating in the country concerned and produced by the specific legal entities mentioned. Products produced by any other company not specifically mentioned in the operative part of this Regulation, including related entities, cannot benefit from these rates and shall be subject to the residual duty rate.

(54) Any claim requesting the application of these individual duty rates (e.g. following a change in the name of the entity) should be addressed to the Commission forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with that name change.

(J) COLLECTION OF THE PROVISIONAL DUTIES

(55) In view of the amount of the dumping margins definitively established for the exporting producers located in India and in the light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional Regulation be definitively collected to the extent of the amount of definitive duties imposed, unless the provisional duty rates are lower in which case the latter should prevail,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of stainless steel wire with a diameter of 1 mm or more, containing by weight 2,5 % or more of nickel, excluding wire containing by weight 28 % or more but no more than 31 % of nickel and 20 % or more but no more than 22 % of chromium, falling within CN code ex 7223 00 19 (TARIC code 7223 00 19*90) and originating in India.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows:

Producer	Rate of duty (%)	Taric additional code
— Bhansali Bright Bars Pvt Ltd, C-8/3, TTC Industrial Area, Village — Pawne Opposite PIL, Thane — Belapur Road, Navi Mumbai 400 705, India	0	A009
— Devidayal Industries Ltd, Gupta Mills Estate, Reary Road, Mumbai 400 010, India	2,4	A010
— Indore Wire Company Ltd, Near Fort, Indore 452 006 (M.P.), India	16,5	A004
— Isinox Steels Ltd, Indiasteel Complex, Railway Gate No 4, Antop Hill, Wadala, Mumbai 400 037, India	0	A002
— Isibars Ltd, Indiasteel Complex, Railway Gate No 4, Antop Hill, Wadala, Mumbai 400 037, India	0	A011
— Mukand Ltd, L.B.S. Marg, Kurla, Mumbai 400 070, India	10,1	A003
— Raajratna Metal Industries Ltd, 909, Sakar - III, Nr Income Tax, Ahmedabad 380 014, Gujarat, India	0	A005
— Venus Wire Industries Ltd, Block No 19, Raghuvanshi Mill Compound, Senapati Bapat Marg, Lower Parel, Mumbai 400 013, India	0	A006
— Macro Bars and Wires Pvt. Ltd, 702 Bombay Market Building, Taredo Road, Mumbai 400 032, India	0	A008
— Kei Industries Ltd, D-90, Okhla Industrial Area Phase-1, New Delhi, India	32,6	A020
— Triveni Shinton International Ltd, Kanti Mansion, 6 Murai Mohalla, Indore, 452 001, (M.P.), India	55,6	A012
— All other Indian companies	55,6	A999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

4. The individual duty rates (as opposed to the country-wide duty applicable to 'others') specified in this Regulation are exclusively applicable to imports of products produced by the specific legal entity/ies mentioned and originating in the country concerned. Products produced by any company not specified by its precise name in the operative part of the Regulation cannot benefit from these rates.

Any claim requesting the application of these individual duty rates (e.g. following a change in the name of the entity) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with that name change. The Commission will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

Article 2

1. The amounts secured by way of the provisional anti-dumping duties on imports of stainless steel wires with a diameter of 1 mm or more originating in India under Regulation (EC) No 617/1999 [2] shall be definitively collected at the rate of the duties definitively imposed. Amounts secured in excess of the definitive rate of anti-dumping duties shall be released.

2. The provisions referred to in Article 1(4) shall also apply to the definitive collection of the amounts secured by way of the provisional anti-dumping duties.

Article 3

The proceeding concerning imports of stainless steel wire with a diameter of 1 mm or more originating in Korea shall be terminated.

Article 4

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 July 1999.

For the Council
The President
S. NIINISTÖ

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[2] OJ L 79, 24.3.1999, p. 13.