

COMMISSION DECISION No 1043/2002/ECSC

of 14 June 2002

amending both Decision No 283/2000/ECSC imposing a definitive anti-dumping duty on imports of certain flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled, originating, *inter alia*, in India, and Decision No 284/2000/ECSC imposing a definitive countervailing duty on the same products, and accepting an undertaking

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

according to Article 2 of the definitive countervailing Decision.

Having regard to the Treaty establishing the European Coal and Steel Community,

- (3) By Commission Decision No 842/2002/ECSC ⁽⁷⁾ the Commission imposed definitive countervailing duties on two further Indian exporting producers not covered in the original investigation, including Jindal Vijayanagar Steel Limited (the company).

Having regard to Commission Decision No 2277/96/ECSC of 28 November 1996 on protection against dumped imports from countries not members of the European Coal and Steel Community ⁽¹⁾, as last amended by Decision No 435/2001/ECSC ⁽²⁾ (the basic Decision), and in particular Article 11(4) thereof,

B. CURRENT PROCEDURE

Having regard to Commission Decision No 1889/98/ECSC of 3 September 1998 on protection against subsidised imports from countries not members of the European Coal and Steel Community ⁽³⁾ (the basic anti-subsidy Decision), and in particular Article 20 thereof,

- (4) The company submitted an application to initiate a 'new exporter' review of the definitive anti-dumping Decision, pursuant to Article 11(4) of the basic Decision. The company claimed that it was not related to any of the exporting producers in India subject to the anti-dumping measures in force with regard to the product concerned. Furthermore, it claimed that it had not exported the product concerned during the original period of investigation (1 January 1998 to 31 December 1998), but had exported the product concerned to the Community since then.

After consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

- (1) By Commission Decision No 283/2000/ECSC ⁽⁴⁾ (definitive anti-dumping Decision), as last amended by Decision No 841/2002/ECSC ⁽⁵⁾, the Commission imposed, *inter alia*, a definitive anti-dumping duty of 10,7 % on imports of hot-rolled coils (product concerned) originating in India, with the exception of imports from several Indian companies specifically mentioned, which are either subject to a lesser rate of duty or to no duty at all which are exempted from the anti-dumping duty since the Commission accepted price undertakings from these companies according to Article 2 of the definitive Decision.
- (2) By Decision No 284/2000/ECSC ⁽⁶⁾ (the definitive countervailing Decision), the Commission imposed, *inter alia*, a definitive countervailing duty of 13,1 % on imports of hot-rolled coils (product concerned) originating in India, with the exception of imports from several Indian companies specifically mentioned, which are exempted from the countervailing duty since the Commission accepted price undertakings from these companies

- (5) The product covered by the current review is the same product as the one under consideration in the definitive anti-dumping Decision.
- (6) The Commission examined the evidence submitted by the company and considered it sufficient to justify the initiation of a new exporter review in accordance with the provisions of Article 11(4) of the basic Decision. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by Commission Decision No 1699/2001/ECSC ⁽⁸⁾, a review of the definitive Decision pursuant to Article 11(4) of the basic Decision with regard to the company and commenced its investigation.
- (7) By the Decision initiating the review, the Commission also repealed the anti-dumping duty imposed by the definitive Decision with regard to imports of the product concerned produced and exported to the Community by the company and directed customs authorities, pursuant to Article 14(5) of the basic Decision, to take appropriate steps to register such imports.

⁽¹⁾ OJ L 308, 29.11.1996, p. 11.

⁽²⁾ OJ L 63, 3.3.2001, p. 14.

⁽³⁾ OJ L 245, 4.9.1998, p. 3.

⁽⁴⁾ OJ L 31, 5.2.2000, p. 15.

⁽⁵⁾ OJ L 134, 22.5.2002, p. 11.

⁽⁶⁾ OJ L 31, 5.2.2000, p. 44.

⁽⁷⁾ OJ L 134, 22.5.2002, p. 18.

⁽⁸⁾ OJ L 231, 29.8.2001, p. 3.

- (8) The Commission officially informed the company and the representatives of India (the exporting country). Furthermore, it gave other parties directly concerned the opportunity to make their views known in writing and to request a hearing. However, no such request was received by the Commission.
- (9) The Commission sent a questionnaire to the company and received a reply within the deadline. The Commission also sought and verified all the information deemed necessary for the determination of dumping. A verification visit was carried out at the premises of the company.
- (10) The investigation of dumping covered the period from 1 November 1999 to 30 June 2001 (the investigation period). The length of the investigation period was necessary in order to cover a sufficiently representative volume of exports of the product concerned to the Community by the company.

C. RESULTS OF THE INVESTIGATION

1. New exporter qualification

- (11) The investigation confirmed that the company had not exported the product concerned during the original period of investigation and that it had begun exporting to the Community after this period.
- (12) Furthermore, the company was able to satisfactorily demonstrate that it did not have any links, direct or indirect, with any of the Indian exporting producers subject to the anti-dumping measures in force with regard to the product concerned.
- (13) Accordingly, it is confirmed that the company should be considered a new exporter in accordance with Article 11(4) of the basic Decision, and thus an individual dumping margin should be determined for it.

2. Dumping

Normal value

- (14) In accordance with Article 2(2) of the basic Decision, the Commission first examined, whether the company's total domestic sales of hot-rolled coils were representative in comparison with its total export sales to the Community. Since these sales amounted to more than 5 % of its total export sales volume to the Community, they were considered representative.
- (15) The Commission subsequently identified those types of hot-rolled coils sold domestically by the company that were identical or directly comparable to the types sold for export to the Community. The investigation showed that the grades and dimensions of the product

concerned exported into the Community by the company are identical or comparable to the products sold on the domestic market.

- (16) For the single type sold for export to the Community by the exporting producer and found to be directly comparable to the type sold on its domestic market, it was then examined whether domestic sales were sufficiently representative with respect to the corresponding export sales. Since the domestic sales were significantly above the 5 % threshold, they were considered representative.
- (17) An examination was also made as to whether the domestic sales could be regarded as having been made in the ordinary course of trade, by establishing the proportion of the sales volume of the product concerned sold at a net sales price equal to or above the calculated cost of production (profitable sales) to independent customers of the type in question. Since the volume of profitable sales of the product concerned represented less than 80 % but 10 % or more of the total sales volume, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only.

Export price

- (18) According to Article 2(8) and (9) of the basic Decision, the export price is the price actually paid or payable for the product in question when sold for export from the exporting Country to the Community, unless the export price so established is found to be unreliable as it is not paid by an independent buyer. Since the export sales to the Community were found to be made to independent customers in the Community, the export price was established on the basis of export prices actually paid or payable.

Comparison

- (19) For the purpose of ensuring a fair comparison between normal value and export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Decision.
- (20) All the allowances claimed by the company on export sales have been accepted. These allowances relate to inland freight, terminal handling and similar charges, ocean freight, bank charges and credit costs. On domestic sales, the company claimed allowances for rebates and sales discounts and credit costs, which were also accepted.

Dumping margin

- (21) In accordance with Article 2(10) and (11) of the basic Decision, the dumping margin was established on the basis of a comparison between the weighted average normal value per product type level and the weighted average export price at ex-factory level for the same product type and at the same level of trade.
- (22) The dumping margin established for the company, expressed as a percentage of the free-at-Community-frontier price, amounts to 30,0 %.

countries not members of the European Coal and Steel Community (the basic anti-subsidy Decision) and Article 14(1) of the basic Decision, no product shall be subject to both anti-dumping and countervailing duties for the purposes of dealing with one and the same situation arising from dumping or from export subsidisation. As anti-dumping duties are to be imposed on imports of the product concerned it is necessary to determine whether, and to what extent, the subsidy and the dumping margin arise from the same situation.

D. AMENDMENT OF THE MEASURES BEING REVIEWED

- (23) In the light of the foregoing, it is considered that a definitive anti-dumping duty should be imposed. In accordance with Article 9(4) of the basic Decision this should not be higher than the injury margin, in case the injury margin is lower than the actual dumping margin found.
- (24) No individual injury margin can be established in a new exporter review since the investigation, pursuant to Article 11(4) of the basic Decision, is limited to the examination of the individual dumping margin. Therefore the dumping margin established was compared to the country-wide injury margin (as established for India by the definitive Decision). Since the latter was lower than the dumping margin, the level of the measures should be based on the injury margin.
- (25) By Decision No 842/2002/ECSC a definitive countervailing duty of 5,7 % was imposed on the company's exports of the product concerned to the Community. In accordance with Article 24(1) of Decision No 1889/98/ECSC on protection against subsidised imports from

- (26) In the case of Decision No 842/2002/ECSC, the subsidy schemes investigated in India have been found to constitute export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Decision. As such, the subsidies can affect the export prices of the Indian exporting producer, thus leading to increased margins of dumping. In other words, the dumping margin established can be wholly or partly due to the existence of export subsidies. In these circumstances it is not considered appropriate to impose both countervailing and anti-dumping duties to the full extent of the relevant subsidy and dumping margins established. Therefore the anti-dumping duty needs to be adjusted to reflect the actual dumping margin remaining after the imposition of the countervailing duties offsetting the effect of the export subsidies.
- (27) Accordingly, the rate of duty applicable to the free-at-Community-frontier price, before duty and taking into account the results of the parallel anti-subsidy proceeding, shall be:

Company	Dumping margin (%)	Injury margin (%)	Export subsidy margin (%)	Countervailing duty (%)	AD duty to be imposed (%)
Jindal Vijayanagar Steel Limited	30,0	23,8	5,7	5,7	18,1

- (28) The individual company anti-dumping duty rate specified in this Decision was established on the basis of the findings of the present investigation. Therefore, it reflects the situation found during that investigation with respect to this company. This duty rate (as opposed to the country-wide duty applicable to 'all other companies') is thus exclusively applicable to imports of products originating in the country concerned and produced by the company and thus by the specific legal entity mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Decision with its name and address, including entities related to the one specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

- (29) Any claim requesting the application of this individual company anti-dumping duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) 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, for example, that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Decision accordingly by updating the list of companies benefiting from individual duty rates.

E. RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY

- (30) In accordance with Article 11(4) of the basic Decision, as the review has resulted in a determination of dumping in respect of the company, the anti-dumping duty applicable to this company shall be levied retroactively from the date of initiation of this review on imports which have been made subject to registration pursuant to Article 3 of Decision No 1699/2001/ECSC.

F. UNDERTAKING

- (31) The company, Jindal Vijayanagar Steel Limited, offered a price undertaking, regarding its exports of the product concerned, to the Community, in accordance with Article 8(1) of the basic Decision and Article 13(1) of the basic anti-subsidy Decision
- (32) After examination of the offer, the Commission considered the undertaking as acceptable since it would eliminate the injurious effects of dumping and subsidisation. Moreover, the regular and detailed reports which the company undertook to provide to the Commission will allow effective monitoring of the undertaking, and the nature of the product and the sales structure of the company is such that the Commission considers that the risk of circumvention is limited.
- (33) It should be recalled that the company had already been the object of a review of the definitive countervailing duties but, at that time, did not offer a price undertaking. Since the offer for an undertaking covers both the anti-dumping measures and the countervailing measures, the Commission accepts the undertaking for both proceedings.
- (34) In order to ensure the effective respect and monitoring of the undertaking, when the request for release for free circulation pursuant to the undertaking is presented, exemption from the duties is conditional upon presentation to the customs service of the Member State concerned a valid 'Commercial Invoice' issued by Jindal Vijayanagar Steel Limited and containing the information listed in the Annex to Decision No 283/2000/ECSC. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rates of anti-dumping and countervailing duties should be payable in order to ensure the effective application of the undertaking.

G. DISCLOSURE AND DURATION OF THE MEASURES

- (35) The companies were informed of the facts and considerations on the basis of which it is intended to impose the amended definitive anti-dumping duty on their exports to the Community.
- (36) This review does not affect the date on which Decision No 283/2000/ECSC will expire pursuant to Article 11(2) of the basic Decision,

⁽¹⁾ European Commission
Directorate-General Trade
Directorate B
J-79 5/16
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

HAS ADOPTED THIS DECISION:

Article 1

1. Commission Decision No 283/2000/ECSC is hereby amended as follows:

— In the section headed 'India' of the table in Article 1(2), the following row is inserted:

Country	Company	Rate of AD duty (%)	TARIC additional code
India	Jindal Vijayanagar Steel Ltd, Jindal Mansion, 5 — A. G. Deshmukh Marg, Mumbai — 400 026	18,1	A270'

— In the table in Article 2(1), the following row is inserted:

Company	Country	TARIC additional code
Jindal Vijayanagar Steel Ltd, Jindal Mansion, 5 — A. G. Deshmukh Marg, Mumbai — 400 026	India	A270'

2. The duty imposed shall be levied retroactively on imports of the product concerned which have been registered pursuant to Article 3 of Commission Decision No 1699/2001/ECSC.

Article 2

Article 2(1) of Commission Decision No 284/2000/ECSC is hereby amended by inserting the following row in the table:

Company	Country	TARIC additional code
Jindal Vijayanagar Steel Ltd, Jindal Mansion, 5 — A. G. Deshmukh Marg, Mumbai — 400 026	India	A270'

Article 3

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

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

Done at Brussels, 14 June 2002.

For the Commission
Pascal LAMY
Member of the Commission