

Commission Regulation (EU) No 1261/2010 of 22 December
2010 imposing a provisional countervailing duty on
imports of certain stainless steel bars 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 12 thereof,

After consulting the Advisory Committee,

Whereas:

1. **PROCEDURE**

1.1. **Initiation**

- (1) On 1 April 2010, the Commission announced, by a notice published in the *Official Journal of the European Union*⁽²⁾ (notice of initiation), the initiation of an anti-subsidy proceeding (AS proceeding) with regard to imports into the Union of certain stainless steel bars originating in India ('India' or 'the country concerned').
- (2) On the same day, the Commission announced by a notice published in the *Official Journal of the European Union*⁽³⁾ (notice of initiation), the initiation of an anti-dumping proceeding with regard to imports into the Union of certain stainless steel bars originating in India and commenced a separate investigation (AD proceeding).
- (3) The AS proceeding was initiated following a complaint lodged on 15 February 2010 by the European Federation of Iron and Steel Industries (Eurofer) (the complainant) on behalf of producers representing a major proportion, in this case more than 25 % of total Union production of certain stainless steel bars. The complaint contained prima facie evidence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an investigation.
- (4) Prior to the initiation of the proceeding 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

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that subsidised imports of certain stainless steel bars 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 contents of the complaint and arriving at a mutually agreed solution. In this case, no mutually agreed solution was found.

1.2. Parties concerned by the proceeding

(5) The Commission officially advised the complainant Union producers, other known Union producers, the exporting producers, importers, users known to be concerned, and the Indian authorities of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(6) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

1.2.1. Sampling for exporting producers in India

(7) In view of the large number of exporting producers in India, sampling was envisaged in the notice of initiation for the determination of subsidization in accordance with Article 27 of the basic Regulation.

(8) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers in India were requested to make themselves known within 15 days from the date of the initiation of the investigation and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies involved in the production and/or selling of the product concerned during the period from 1 April 2009 to 31 March 2010.

(9) The relevant Indian authorities were also consulted for the selection of a representative sample.

(10) In total, 22 exporting producers, including groups of related companies in India, provided the requested information and agreed to be included in the sample within the deadline set in the notice of initiation. 20 of these cooperating companies or groups reported exports of the product concerned to the Union during the investigation period. Thus, the sample was chosen on the basis of the information submitted by these 20 exporting producers or groups of exporting producers.

(11) Any exporting producers which did not make themselves known within the aforesaid deadline or did not provide the requested information in due time, were considered as non-cooperating with the investigation. The comparison between Eurostat import data and the volume of exports to the Union of the product concerned reported for the investigation period by the 20

cooperating companies or groups with exports of the product concerned to the Union during the investigation period suggests that the cooperation of Indian exporting producers was very high.

1.2.2. *Selection of the sample of cooperating companies in India*

- (12) In accordance with Article 27 of the basic Regulation, the Commission selected a sample based on the largest representative volume of exports of the product concerned to the Union which could reasonably be investigated within the time available. The sample selected consisted of two individual companies and one group of companies consisting of four related companies, together representing more than 63 % of the total volume of exports to the Union of the product concerned.

1.2.3. *Individual examination of companies not selected in the sample*

- (13) One exporting producer which was not included in the sample because it did not meet the criteria set in Article 27(1) of the basic Regulation requested that an individual margin of subsidisation be established pursuant to Article 27(3) of the basic Regulation and provided a reply to the questionnaire.
- (14) As mentioned in recital 12 the sample was limited to a reasonable number of companies which could be investigated within the time available. The companies investigated for the purpose of the investigation of subsidisation are listed in recital 22 below. In view of the number of verification visits to be carried out at the premises of these companies, it was considered that the individual examination would be unduly burdensome and would have prevented the timely completion of the investigation.
- (15) Therefore, it was provisionally concluded that the request for an individual examination could not be accepted.

1.2.4. *Sampling of Union producers*

- (16) In view of the large number of Union producers, sampling was envisaged in the notice of initiation for the determination of injury in accordance with Article 27 of the basic Regulation.
- (17) No other producers than the eight complainants made themselves known and provided, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period. Out of these eight, a sample of four companies was selected on basis of the representativeness of their sales volume, their various product types and their location in the Union. The complainant and the producers concerned were consulted on the selection of the sample.
- (18) The four sampled Union producers accounted for 62 % of the total production of the Union industry during the investigation period.

1.2.5. *Sampling of importers*

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- (19) In view of the large number of importers identified in the complaint, sampling was envisaged for importers in the notice of initiation in accordance with Article 27 of the basic Regulation. Four importers provided the requested information and agreed to be included in the sample within the deadline set in the notice of initiation. Given the low number of importers who made themselves known, it was decided not to apply sampling.
- (20) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Questionnaires were thus sent to the GOI, the sampled exporting producers in India, the sampled Union producers, to the four importers in the Union that came forward within the sampling exercise and to all users known to be concerned by the investigation.
- (21) Replies were received from the GOI, the sampled exporting producers, the exporting producer which requested individual examination, the sampled producers in the Union and from one importer. No questionnaire replies were received from users or from any other interested party in the proceeding. In addition, a major proportion of Union producers provided the requested general data for the injury analysis.
- (22) The Commission sought and verified all the information provided by interested parties and deemed necessary for a provisional determination of subsidisation, resulting injury and Union interest. Verification visits were carried out at the premises of GOI in Delhi, the Government of Maharashtra in Mumbai, the regional office of the GOI in Mumbai, and the following parties:
- Producers in the Union*
- Aceros Inoxidables Olarra SA, Spain and related sales companies,
 - Rodaciai SPA, Italy and related sales companies,
 - Roldan SA, Spain and related sales companies,
 - Ugitech France SA, France and related sales companies.
- Exporting producers in India*
- Viraj Profiles Vpl. Ltd, Thane, Maharashtra,
 - Chandan Steel Ltd, Mumbai, Maharashtra.
- Venus group:
- Venus Wire Industries Pvt. Ltd, Mumbai, Maharashtra,
 - Precision Metals, Mumbai, Maharashtra,
 - Hindustan Inox Ltd, Mumbai, Maharashtra,
 - Sieves Manufacturer India Pvt. Ltd, Mumbai, Maharashtra.

1.3. Investigation period

- (23) The investigation of subsidisation and injury covered the period from 1 April 2009 to 31 March 2010 ('investigation period' or 'IP'). The examination of

trends relevant for the assessment of injury covered the period from 2007 to the end of the investigation period (period considered).

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

- (24) The product concerned is stainless steel bars and rods, not further worked than cold-formed or cold-finished, other than bars and rods of circular cross-section of a diameter of 80 mm or more, originating in India (the product concerned) currently falling within CN codes 7222 20 21, 7222 20 29, 7222 20 31, 7222 20 39, 7222 20 81 and 7222 20 89.

2.2. **Like product**

- (25) The investigation showed that the products produced and sold on the domestic market of India, which are covered by this investigation, have the same basic physical, chemical and technical characteristics and uses as those exported from this country to the Union market. Similarly, the products produced by the Union industry and sold on the Union market have the same basic physical, chemical and technical characteristics and uses when compared to those exported to the Union from the country concerned. They are therefore provisionally considered to be alike within the meaning of Article 2(c) of the basic Regulation.

3. **SUBSIDISATION**

3.1. **Introduction**

- (26) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:
- (a) Duty Entitlement Passbook Scheme;
 - (b) Advance Authorisation Scheme;
 - (c) Export Promotion Capital Goods Scheme;
 - (d) Export Oriented Units Scheme;
 - (e) Export Credit Scheme.
- (27) The schemes (a) to (d) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every 5 years and updated regularly. Two Foreign Trade Policy documents are relevant to the IP of this investigation, i.e. FT-policy 04-09 and FT-policy 09-14. – In addition, the GOI also sets

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out the procedures governing the FT-policy 04-09 and FT-policy 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 04-09' and 'HOP I 09-14' respectively). The Handbook of Procedures is also updated on a regular basis.

- (28) The Export Credit Scheme specified above under (e) is based on sections 21 and 35A of the Banking Regulation Act 1949, which allow the Reserve Bank of India (RBI) to direct commercial banks in the field of export credits.

3.2. **Duty Entitlement Passbook Scheme (DEPBS)**

(a) *Legal Basis*

- (29) The detailed description of the DEPBS is contained in chapter 4.3 of the FT-policy 04-09 and FT-policy 09-14 as well as in chapter 4 of the HOP I 04-09 and of the HOP I 09-14.

(b) *Eligibility*

- (30) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) *Practical implementation of the DEPBS*

- (31) An exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of Standard Input Output Norms ('SIONs') taking into account a presumed import content of inputs in the export product and the customs duty incidence on such presumed imports, regardless of whether import duties have actually been paid or not.

- (32) To be eligible for benefits under this scheme, a company must export. At the time of the export transaction, a declaration must be made by the exporter to the Indian authorities indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue an export shipping bill during the dispatch procedure. This document shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction. At this point in time, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit.

- (33) It was found that in accordance with Indian accounting standards, DEPBS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods – except capital goods and goods where there are import restrictions. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. DEPBS credits are freely transferable and valid for a period of 12 months from the date of issue.

- (34) Application for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. *De facto* no strict deadlines apply to DEPBS credits. The electronic system used to manage DEPBS does not automatically exclude export transactions exceeding the submission deadline mentioned in chapter 4.47 of the HOP I 04-09 and 09-14. Furthermore, as clearly provided in chapter 9.3 of the HOP I 04-09 and 09-14, applications received after the expiry of submission deadlines can always be considered subject to the imposition of a minor penalty fee (i.e. 10 % of the entitlement).
- (35) It was found that two of companies in the sample, Chandan Steel and the companies in the Venus group used this scheme during the IP.
- (d) *Conclusions on the DEPBS*
- (36) The DEPBS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A DEPBS credit is a financial contribution by the GOI since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would otherwise be due. In addition, the DEPBS credit confers a benefit upon the exporter because it improves its liquidity.
- (37) Furthermore, the DEPBS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (38) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation since it does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. In particular, an exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I, and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DEPBS.
- (e) *Calculation of the subsidy amount*
- (39) In accordance with Articles 3(2) and 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient found to exist during the IP. In this regard, it was considered that

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the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At that moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, it is considered appropriate to assess the benefit under the DEPBS as being the sums of the credits earned on export transactions made under this scheme during the IP.

- (40) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amount as numerator, pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the total export turnover during the IP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.
- (41) The subsidy rate established in respect of this scheme for the companies concerned during the IP ranged from 1,5 % to 3,4 %.

3.3. **Advance Authorisation Scheme (AAS)**

(a) *Legal basis*

- (42) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the FT-policy 04-09 and FT-policy 2009-2014 and chapters 4.1 to 4.30 of the HOP I 2004-2009 and of the HOP I 2009-2014.

(b) *Eligibility*

- (43) The AAS consists of six sub-schemes, as described in more detail in recital (44) below. Those sub-schemes differ, inter alia, in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement sub-schemes. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the FT-policy 2004-2009, such as suppliers of an export oriented unit ('EOU'), are eligible for the AAS deemed export sub-scheme. Eventually, intermediate suppliers to manufacturer-exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order ('ARO') and back to back inland letter of credit.

(c) *Practical implementation*

- (44) The AAS can be issued for:

- (i) *Physical exports* : This is the main sub-scheme. It allows for duty-free import of input materials for the production of a specific resulting export product. ‘Physical’ in this context means that the export product has to leave Indian territory. An import allowance and export obligation including the type of export product are specified in the licence;
- (ii) *Annual requirement* : Such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The licence holder can – up to a certain value threshold set by its past export performance – import duty-free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resulting product falling under the product group using such duty-exempt material;
- (iii) *Intermediate supplies* : This sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter who produces the intermediate product can import duty-free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product;
- (iv) *Deemed exports* : This sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as ‘deemed exports’ to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of the FT-policy 04-09. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an export-oriented unit (EOU) or to a company situated in a special economic zone (SEZ);
- (v) *Advance Release Order (ARO)* : The AAS holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases the Advance Authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of the FT-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter

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- in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs;
- (vi) *Back to back inland letter of credit* : This sub-scheme again covers indigenous supplies to an Advance Authorisation holder. The holder of an Advance Authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation will be validated by the bank for direct import only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to deemed export benefits as set out in paragraph 8.3 of the HUF-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).
- (45) Two companies received concessions under the AAS linked to the product concerned during the IP. These companies made use of one of the sub-schemes, i.e. AAS physical exports. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.
- (46) For verification purposes by the Indian authorities, an Advance Authorisation holder is legally obliged to maintain ‘a true and proper account of consumption and utilisation of duty-free imported/domestically procured goods’ in a specified format (chapters 4.26, 4.30 and Appendix 23 HOP I 04-09 and HOP I 09-14), i.e. an actual consumption register. This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under Appendix 23 is true and correct in all respects.
- (47) With regard to the sub-scheme used during the IP by the companies concerned, i.e. physical exports, the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the Authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the Authorisation. The volume of imports allowed under the AAS is determined by the GOI on the basis of Standard Input Output Norms (SIONs) which exist for most products including the product concerned.
- (48) Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (24 months with two possible extensions of 6 months each).
- (49) The investigation established that the verification requirements stipulated by the Indian authorities were either not honoured or not yet tested in practice.

- (50) One of the companies investigated did not maintain a system whereby it could be verified which inputs were consumed in the production of the exported product and in what amounts, as stipulated by the FT-policy (Appendix 23) and in accordance with Annex II(II)(4) of the basic Regulation. In fact, there were no records of actual consumption. Changes in the administration of the FT-policy 2004 to 2009, which became effective in autumn of 2005 (mandatory sending of the consumption register to the Indian authorities in the context of the redemption procedure) has not yet been applied in the case of this company. Thus, the de facto implementation of this provision could not be verified at this stage.
- (51) As regarding the other company, it did maintain a certain production and consumption register. However, the consumption register for the IP was not available, and consequently it was not possible to verify, inter alia, the consumption records in order to establish which inputs were consumed in the production of the exported product and in what amounts, as stipulated by the FT-policy (Appendix 23). Regarding the verification requirements referred to in recital 46 above, there were no records kept by the company on how this certification took place. There was no audit plan or any other supporting material of the audit performed (e.g. a report of the auditing), no recorded information on the methodology used and the specific requirements needed for such scrupulous work that required detailed technical knowledge on production processes. In sum, it is considered that the investigated exporter was not able to demonstrate that the relevant FT-policy provisions were met.
- (d) *Conclusion on the AAS*
- (52) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, namely it constitutes a financial contribution of the GOI which conferred a benefit upon the investigated exporters.
- (53) In addition, AAS physical exports are clearly contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under these schemes.
- (54) The sub-scheme used in the present case cannot be considered permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The GOI did not effectively apply a verification system or a procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). It is also considered that the SIONs for the

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product concerned were not sufficiently precise and that themselves cannot constitute a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation).

- (55) The sub-scheme is therefore countervailable.
- (e) *Calculation of the subsidy amount*
- (56) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties. According to Article 3(1)(a)(ii) and Annex I(i) of the basic Regulation only when the conditions of Annexes II and III of the basic Regulation are met that the excess remission of duties can be countervailed. However, these conditions were not fulfilled in the present case. Thus, if an adequate monitoring process is not demonstrated, the above exception for drawback schemes is not applicable and the normal rule of the countervailing of the amount of unpaid duties (revenue forgone), applies, rather than of any purported excess remission. As set out in Annexes II(II) and III(II) of the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To the contrary, according to Article 3(1)(a)(ii) of the basic Regulation, the investigating authority only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.
- (57) The subsidy amount for the companies which used the AAS was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the sub-scheme during the IP (numerator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount was allocated over the export turnover of the product concerned during the IP as appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.
- (58) The subsidy rate established in respect of this scheme for the concerned companies for the IP amounts to 0,8 % and 1,5 % respectively.

3.4. **Export Promotion Capital Goods Scheme (EPCGS)**

- (59) The investigation revealed that two of the companies or groups of companies in the sample used this scheme during the IP. However, it was found that the incentives received were negligible. Therefore, it was considered that it was not necessary to further evaluate the countervailability of this scheme in this investigation.

3.5. **Export Oriented Units Scheme (EOUS)**

- (60) It was found that one of the companies in the sample had the status of an EOU and received subsidies in the IP.

(a) *Legal basis*

- (61) The details of the EOU scheme are contained in chapter 6 of the FT-policy 04-09 and FT-policy 09-14 as well as in chapter 6 of the HOP I 04-09 and of the HOP I 09-14.

(b) *Eligibility*

- (62) With the exception of pure trading companies, all enterprises which, in principle, undertake to export their entire production of goods or services may be set up under the EOUS. Undertakings in the industrial sectors have to fulfil a minimum investment threshold in fixed assets to be eligible for the EOUS.

(c) *Practical implementation*

- (63) Export oriented units can be located and established anywhere in India.

- (64) An application for EOU status must include details for a period of the next 5 years on, inter alia, planned production quantities, projected value of exports, import requirements and indigenous requirements. Upon acceptance by the authorities of the company's application, the terms and conditions attached to this acceptance will be communicated to the company. The agreement to be recognised as a company under EOUS is valid for a five-year period. The agreement may be renewed for further periods.

- (65) A crucial obligation of an EOU as set out in the FT-policy 2004-2009 and FT-policy 2009-2014 is to achieve net foreign exchange (NFE) earnings, that is in a reference period (5 years) the total value of exports has to be higher than the total value of imported goods.

- (66) Export oriented units are entitled to the following concessions:

- (i) exemption from import duties on all types of goods (including capital goods, raw materials and consumables) required for the manufacture, production, processing, or in connection therewith;
- (ii) exemption from excise duty on goods procured from indigenous sources;
- (iii) reimbursement of central sales tax paid on goods procured locally;

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- (iv) the facility to sell part of production on the domestic market of up to 50 % of FOB value of exports, subject to fulfilment of positive NFE earnings upon payment of concessional duties, namely excise duties on finished products;
- (v) partial reimbursement of duty paid on fuel procured from domestic oil companies;
- (vi) exemption from income tax normally due on profits realised on export sales in accordance with Section 10B of the Income Tax Act for a 10-year period after starting its operations.
- (67) Units operating under these schemes are bonded under the surveillance of customs officials.
- (68) They are legally obliged to maintain a proper account of all imports, of the consumption and utilisation of all imported materials and of the exports made in accordance with the relevant paragraph of HOP I 2009-2014. These documents should be submitted periodically to the competent authorities in India through quarterly and annual progress reports.
- (69) However, 'at no point in time [an EOU] shall be required to co-relate every import consignment with its exports, transfers to other units, sales in DTA or stocks', as the relevant section of the HOP I 2009-2014 states.
- (70) Domestic sales are dispatched and recorded on a self-certification basis. The dispatch process of export consignments of an EOU is supervised by a customs/excise official.
- (71) In the present case, the EOUS was used by one of the cooperating exporters in the sample. This cooperating exporter utilised the scheme to import raw materials, consumables and capital goods free of import duties, to procure goods domestically free of excise duty and to obtain sales tax reimbursement, and to sell part of its production on the domestic market. The cooperating exporter thereby availed of all benefits as described in recital 66 above under (i) to (vi). However, as regards income tax exemption pursuant to Section 10B of the Income Tax Act, the investigation revealed that, as from 1 April 2010, the company would no longer be eligible for this exemption. Consequently, the income tax exemption provisions of the EOU were not further considered in the context of this investigation.
- (d) *Conclusions on the EOUS*
- (72) The exemptions of an EOU from three types of import duties ('basic customs duty', 'education cess on customs duty' and 'higher secondary education cess') and the reimbursement of sales tax are financial contributions of the GOI within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Government revenue which would be due in the absence of this scheme is forgone, thus, conferring a benefit upon the EOU in the meaning of Article

3(2) of the basic Regulation because it improved liquidity by not having to pay duties normally due and by obtaining a sales tax reimbursement.

- (73) The exemption from excise duty and its import duty equivalent ('EED'), however, do not lead to revenue forgone which is otherwise due. Excise and additional customs duty, if paid, could be used as a credit for its own future duty liabilities (the so-called 'CENVAT mechanism') which is a system comparable to VAT and which allows Indian companies to offset taxes on purchases with taxes payable on sales. Therefore, these duties are not definitive. By the means of 'CENVAT'-credit only an added value bears a definitive duty, not the input materials.
- (74) Thus, only the exemption from basic customs duty, education cess on customs duty, higher secondary education cess and the central sales tax reimbursement, constitute subsidies within the meaning of Article 3 of the basic Regulation. They are contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation. The export objective of an EOU as set out in chapter 6.1 of the FT-policy 2009-2014 is a *conditio sine qua non* to obtain the incentives.
- (e) *Calculation of the subsidy amount*
- (75) Accordingly, the countervailable benefit is the remission of import duties basic customs duty, education cess on customs duty, higher secondary education cess normally due upon importation as well as the reimbursement of central sales tax, during the IP.
- (i) *Exemption from import duties (basic customs duty, education cess on customs duty, higher secondary education cess), reimbursement of central sales tax on raw materials and consumables*
- (76) The subsidy amount for the exporter that are export oriented units was calculated on the basis of import duties forgone (basic customs duty, education cess on customs duty, higher secondary education cess) on the materials imported for the EOU as a whole and the sales tax reimbursed during the IP. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation from this sum to arrive at the subsidy amount as numerator. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the appropriate export turnover generated during the IP as appropriate denominator because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy margin obtained under the EOUS for the company concerned amounts to 4,3 %.
- (ii) *Exemption from import duties (basic customs duty, education cess on customs duty, higher secondary education cess) on capital goods*

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- (77) Capital goods are not physically incorporated into the finished goods. In accordance with Article 7(3) of the basic Regulation, the benefit to the concerned company has been calculated on the basis of the amount of unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in one of the investigated company. The amount so calculated is then attributable to the IP and has been adjusted by adding interest during this period in order to reflect the value of the benefit over time and thereby establish the full benefit of this scheme to the recipient. In accordance with Articles 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the appropriate export turnover generated during the IP as appropriate denominator because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy margin thus obtained for the company concerned was negligible.

3.6. **Export Credit Scheme (ECS)**

(a) *Legal basis*

- (78) The details of the scheme are set out in the Master Circular DBOD No. DIR.(Exp).BC 01/04.02.02/2007-08 (Rupee/Foreign Currency Export Credit) and Master Circular DBOD No. DIR.(Exp).BC 09/04.02.02/2008-09 (Rupee/Foreign Currency Export Credit) of the Reserve Bank of India (RBI), which is addressed to all commercial banks in India.

(b) *Eligibility*

- (79) Manufacturing exporters and merchant exporters are eligible for this scheme.

(c) *Practical implementation*

- (80) Under this scheme, the RBI sets maximum ceiling interest rates applicable to export credits which are mandatory, both in Indian rupees and in foreign currency, which commercial banks can charge an exporter. The ECS consists of two sub-schemes, the Pre-Shipment Export Credit Scheme (packing credit), which covers credits provided to an exporter for financing the purchase, processing, manufacturing, packing and/or shipping of goods prior to export, and the Post-Shipment Export Credit Scheme, which provides for working capital loans with the purpose of financing export receivables. The RBI also directs the banks to provide a certain amount of their net bank credit towards export finance.
- (81) As a result of the RBI Master Circulars exporters can obtain export credits at preferential interest rates as compared with the interest rates for ordinary commercial credits (cash credits), which are solely set under market conditions. The difference in rates might decrease for companies with good credit ratings. In fact, high rating companies might be in a position to obtain export credits and cash credits at the same conditions.

- (82) It was found that the one of the companies used this scheme during the IP.
- (d) *Conclusion on the ECS*
- (83) The preferential interest rates of an ECS credit set by the RBI Master Circulars mentioned in recital 78 can decrease the interest costs of an exporter as compared with credit costs purely set by market conditions and confer in this case a benefit in the meaning of Article 3(2) of the basic Regulation on such an exporter. Export financing is not *per se* more secure than domestic financing. In fact, it is usually perceived as being more risky and the extent of security required for a certain credit, regardless of the finance object, is a purely commercial decision of a given commercial bank. Rate differences with regard to different banks are the result of the methodology of the RBI to set maximum lending rates for each commercial bank individually.
- (84) Despite the fact that the preferential credits under the ECS are granted by commercial banks, this benefit is a financial contribution by a government within the meaning of Article 3(1)(a)(iv) of the basic Regulation. In this context, it should be noted that neither Article 3(1)(a)(iv) of the basic Regulation nor the Agreement on Subsidies and Countervailing Measures require a charge on the public accounts, e.g. reimbursement of the commercial banks by the GOI, to establish a subsidy, but only government direction to carry out functions illustrated in points (i), (ii) or (iii) of Article 3(1)(a) of the basic Regulation. The RBI is a public body and falls therefore under the definition of ‘government’ as set out in Article 2(b) of the basic Regulation. It is 100 % government-owned, pursues public policy objectives, e.g. monetary policy, and its management is appointed by the GOI. The RBI directs private bodies, within the meaning of the second indent of Article 3(1)(a)(iv) of the basic Regulation, since the commercial banks are bound by the conditions it imposes, inter alia, with regard to the maximum ceilings for interest rates on export credits mandated in the RBI Master Circulars and the RBI provisions that commercial banks have to provide a certain amount of their net bank credit towards export finance. This direction obliges commercial banks to carry out functions mentioned in Article 3(1)(a)(i) of the basic Regulation, in this case to provide loans in the form of preferential export financing. Such direct transfer of funds in the form of loans under certain conditions would normally be vested in the government, and the practice differs, in no real sense, from practices normally followed by governments, within the meaning of Article 3(1)(a)(iv) of the basic Regulation. This subsidy is deemed to be specific and countervailable since the preferential interest rates are only available in relation to the financing of export transactions and are therefore contingent upon export performance, pursuant to Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (e) *Calculation of the subsidy amount*

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- (85) The subsidy amount has been calculated on the basis of the difference between the interest paid for export credits used during the IP and the amount that would have been payable for ordinary commercial credits used by the company concerned. This subsidy amount (numerator) has been allocated over the total export turnover during the IP as the appropriate denominator in accordance with Article 7(2) of the basic Regulation because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.
- (86) The subsidy rate established in respect of this scheme for the company for the IP amounts to 0,4 %.

3.7. Amount of countervailable subsidies

- (87) Based on the findings, as summarised in the below table, the total amount of countervailable subsidies, expressed *ad valorem*, were found to range from 3,3 % to 4,3 %:

SCHEME → COMPANY	DEPBS ^a	AAS ^a	EOU ^a	ECS ^a	Total
Chandan Steel Ltd	1,5 %	1,5 %		0,4 %	3,4 %
Venus group	2,6 % to 3,4 %	0 to 0,8 %			3,3 % ^b
Viraj Profiles Vpl. Ltd			4,3 %		4,3 %

a Subsidies marked with an asterisk are export subsidies.

b Weighted average for the Group.

- (88) In accordance with Article 15(3) of the basic Regulation, the subsidy margin for the cooperating companies not included in the sample, calculated on the basis of the weighted average subsidy margin established for the cooperating companies in the sample, is 4,0 %.
- (89) With regard to all other exporters in India, the Commission first established the level of cooperation. As mentioned in recital 10 above, the comparison between Eurostat import data and the volume of exports to the Union of the product concerned reported for the investigation period by the cooperating companies or groups with exports of the product concerned to the Union during the investigation period shows that the cooperation of Indian exporting producers was very high, namely 100 %. Given this high level of cooperation, the subsidy rate for all non-cooperating companies is set at the level for the company with the highest individual rate, i.e. 4,3 %,

4. UNION INDUSTRY

4.1. Union production

(90) The output of the following Union producers was considered for establishing the volume of Union production:

- eight producers on whose behalf the complaint was lodged,
- four producers which supported the proceeding,
- twelve other Union producers listed in the complaint, which were neither complainants nor supporting the proceeding but did not oppose the present investigation.

(91) Consequently, the Union production consists of these 24 companies for the purpose of the injury analysis as a whole.

4.2. Sampling of Union producers

(92) As mentioned above in recital 17, a sample of four companies was selected from those producers who made themselves known to the Commission and provided, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period.

(93) These four sampled Union producers accounted for 62 % of the total production of the Union industry during the IP.

5. INJURY

5.1. Preliminary remarks

(94) Injury has been assessed on the basis of trends concerning production, production capacity, capacity utilisation, sales, market share and growth collected at the level of the total Union industry and trends concerning prices, employment, productivity, profitability, cash flow, ability to raise capital and investments, stocks, return on investment and wages collected at the level of the sampled Union producers.

5.2. Union consumption

(95) Union consumption was established on the basis of the sales volumes of the sampled Union industry, the sales data of the other Union producers as provided by the complainant, the import volume data on the Union market obtained from Eurostat for the period 2007 to 2009 and the replies to the sampling questions for the IP.

	2007	2008	2009	IP
Union consumption in tonnes	315 143	285 548	186 198	202 019

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Index (2007 = 100)	100	91	59	64
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(96) During the period considered, consumption decreased by 36 %. From 2007 to 2009, the consumption decreased by 41 % but increased slightly by 5 percentage points between 2009 and the IP.

(97) The economic downturn has contributed to the decrease in consumption from 2008, during which users of the product concerned like the automotive industry, domestic appliances, chemical and building industries, experienced a serious drop in demand for their products. In the second half of the IP, the market situation started to improve slightly, resulting in a small increase in demand for the product concerned compared to the first half of the IP.

5.3. Imports into the Union from the country concerned

5.3.1. Volume and market share of the imports concerned

	2007	2008	2009	IP
Imports from India in tonnes	32 754	31 962	18 759	23 792
Index (2007 = 100)	100	98	57	73
Market share of imports	10,39 %	11,19 %	10,07 %	11,78 %
Index (2007 = 100)	100	108	97	113

(98) Based on Eurostat for the period 2007 to 2009 and the replies to the sampling questions for the IP, imports of the product concerned from India followed the downward trend of the EU consumption and decreased by 27 % during the period considered. The biggest decrease took place between 2008 and 2009 when imports dropped by 41 percentage points. Imports then increased by 16 percentage points between 2009 and the IP.

(99) Since this decrease is lower than the decrease in Union consumption, the market share of the Indian producers slightly increased from 10,39 % in 2007 to 11,78 % in the IP.

5.3.2. Prices of imports and price undercutting

	2007	2008	2009	IP
Average import price	3 504	2 908	2 138	1 971

from India EUR/tonne				
<i>Index (2007 = 100)</i>	<i>100</i>	<i>83</i>	<i>61</i>	<i>56</i>

- (100) The average import price of the product concerned from India decreased by 44 % with the biggest decrease occurring between 2008 and 2009 when prices fell by 22 percentage points. Although this decrease followed the downward trend of the raw material prices, it has to be noted that throughout the period considered, the average import price per unit from India was significantly lower than the average per unit sales price of the Union industry, resulting in strong price pressure on the Union sales prices.
- (101) A comparison for the IP between the sampled Union industry's ex-works prices to unrelated customers on the Union market with the CIF Union frontier prices of exporting producers in India, duly adjusted for unloading and customs clearance costs, showed price undercutting ranging between 16,7 % and 18,2 %.

5.4. Economic situation of the Union industry

- (102) Pursuant to Article 8(4) of the basic Regulation, the examination of the impact of the subsidised imports from India on the Union industry included an analysis of all relevant economic factors having a bearing on the state of the industry from 2007 to the IP.

5.4.1. Data relating to the Union industry as a whole

(a) Production, production capacity and capacity utilisation

	2007	2008	2009	IP
Production volume in tonnes	296 576	262 882	159 397	170 557
<i>Index (2007 = 100)</i>	<i>100</i>	<i>89</i>	<i>54</i>	<i>58</i>
Production capacity in tonnes	478 174	491 016	486 755	476 764
<i>Index (2007 = 100)</i>	<i>100</i>	<i>103</i>	<i>102</i>	<i>100</i>
Capacity utilisation	62 %	54 %	33 %	36 %
<i>Index (2007 = 100)</i>	<i>100</i>	<i>86</i>	<i>53</i>	<i>58</i>

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- (103) Between 2007 and the IP the Union industry's overall production decreased by 42 % while the production capacity remained stable, causing the capacity utilisation rate to decrease by 26 percentage points. The decrease in production was greater than that of the Union consumption which decreased by 36 % over the period considered.

(b) *Sales volume, market share*

	2007	2008	2009	IP
EU sales in tonnes	255 300	230 344	154 602	164 191
Index (2007 = 100)	100	90	61	64
Market share (% of Union consumption)	81 %	81 %	83 %	81 %
Index (2007 = 100)	100	100	102	100

- (104) The Union industry's sales volume of the like product when sold to the first independent customer on the Union market decreased by 36 % over the period considered with the biggest decrease occurring between 2008 and 2009 when sales fell by 29 percentage points. Sales then increased slightly by 3 percentage points between 2009 and the IP.

- (105) The Union industry's market share remained stable at a level of around 81 % over the period considered.

(c) *Growth*

- (106) Since both the Union consumption and the sales volume of the Union industry decreased by 36 % over the period considered, the market share of the Union industry remained stable at 81 %.

(d) *Magnitude of the actual subsidy margin*

- (107) Given the volume, market share and prices of the subsidised imports from India, the impact on the Union industry of the actual subsidy margins cannot be considered to be negligible.

5.4.2. *Data relating to the sampled Union producers*

(a) *Stocks*

- (108) The Union industry mainly produces on order, stocks can therefore not be considered as a meaningful injury indicator. The trends in stocks are given for

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information purposes. The figures below only refer to the sampled companies and represent the volume of stocks at the end of each period.

	2007	2008	2009	IP
Closing stock in tonnes	25 315	27 736	24 032	19 730
Index (2007 = 100)	100	110	95	78

(109) The volume of stocks decreased by 22 % during the period considered, but as a percentage of production, stocks increased from 16 % to 19,5 %.

(b) *Average unit selling prices on the Union market and cost of production*

	2007	2008	2009	IP
Average sales price of the Union industry (EUR)	4 478	3 615	2 507	2 521
Index (2007 = 100)	100	81	56	56
Unit cost of production	4 003	3 408	2 900	2 773
Index (2007 = 100)	100	85	72	69

(110) The average unit prices of the sampled Union industry's sales to unrelated customers on the Union market decreased by 44 % between 2007 and the IP with the biggest decrease occurring between 2008 and 2009 when prices fell by 25 percentage points. Part of this decrease however, was due to the drop in the unit cost of production of the product concerned which decreased by 31 % over the period considered. The drop in unit costs was mainly caused by the decrease in raw material prices. This decrease was slightly modulated by the increase in the proportion of fixed costs per unit produced, due to the lower capacity utilisation.

(c) *Employment, productivity and labour costs*

	2007	2008	2009	IP
Number of employees	1 044	1 007	947	885
Index	100	97	91	85

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Productivity (tonnes/employee)	149	141	97	115
Index	100	94	65	77
Average labour costs per employee	47 686	48 062	47 131	49 972
Index	100	101	99	105

- (111) The number of employees was reduced by 15 % over the period considered due to the downsizing of activities of the Union industry.
- (112) As regards average labour costs per employee, they increased slightly by 5 % over the period considered. This is considered a natural increase and is less than the rate of inflation over the period considered. Furthermore, it should be noted that labour costs do not form a significant part of the total cost of production of stainless steel bars.
- (d) *Profitability, cash flow, investments, return on investments and ability to raise capital*

	2007	2008	2009	IP
Profitability of EU sales (% of net sales)	9,5 %	3,5 %	-12,8 %	-7,9 %
Index	100	37	-135	-83
Cash flow (EUR)	44 464 193	13 280 433	-12 678 708	-3 063 190
Index	100	30	-29	-7
Investments (1 000 EUR)	18 085 847	15 714 829	4 341 909	4 198 607
Index (2007 = 100)	100	87	24	23
Return on investments	101 %	25 %	-50 %	-33 %
Index (2007 = 100)	100	25	-49	-32

- (113) Profitability of the Union industry was established by expressing the pre-tax net profit of the sales of the like product as a percentage of the turnover of these sales. Over the period considered, the profitability dropped significantly and turned from a profit of more than 9 % in 2007 into a loss of almost 8 %

in the IP. The biggest fall in profits was seen between 2008 and 2009, i.e. by more than 16 percentage points.

- (114) The net cash flow generated by the like product decreased by 107 % from 2007 to the IP.
- (115) The annual investment in the production of the like product decreased by 77 % in the period under consideration.
- (116) The return on investment (ROI), expressed as the profit in percent of the net book value of investments, followed the negative trend of profitability, decreasing by 134 percentage points.
- (117) There were no indications that the industry suffered a reduced ability to raise capital over the period considered.

5.5. **Conclusion on injury**

- (118) During the period considered almost all injury indicators pertaining to the Union industry developed negatively.
- (119) Union consumption decreased by 36 %, the Union industry's sales volume dropped by 36 % and the capacity utilisation decreased by 42 %. The unit sales prices of the sampled Union producers decreased the by 44 % to a level below cost. They followed the decrease in price of the Indian imports in order to maintain a certain volume of sales and production in order to cover the fixed costs.
- (120) Profitability turned from a profit of 9,5 % in 2007 into a loss of almost 8 % in the IP. Investments, cash flow and return on investments followed the negative trend as well, decreasing by 77 %, 107 % and 246 percentage points respectively over the period considered.
- (121) Only one indicator, i.e. the market share of the Union industry, remained stable at a level of 81 %.
- (122) In the light of the foregoing, it is concluded that the Union industry has suffered material injury within the meaning of Article 8(5) of the basic Regulation.

6. **CAUSATION**

6.1. **Introduction**

- (123) In accordance with Article 8(5) and Article 8(6) of the basic Regulation, the Commission examined whether the subsidised imports from India had caused injury to the Union industry to a degree sufficient to be considered as material. Known factors other than the subsidised imports, which could at the same time be injuring the Union industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the subsidised imports.

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6.2. Effect of the subsidised imports

- (124) The decrease in import prices of 44 % over the period considered, as well as the high margins of undercutting found during the IP, ranging from 16,7 % to 18,2 %, coincided with the deterioration of the economic situation of the Union industry.
- (125) In view of the level of subsidisation of the cooperating exporters, the low price level of subsidised imports which significantly undercut the Union industry's prices, their presence on the Union market played a significant role in further exacerbating the negative trend on sales prices on the Union market. The material injury suffered by the Union industry is most clearly seen in the low level of sales prices and the dramatic level of financial losses incurred by the industry.
- (126) The average prices of imports from India decreased substantially, forcing the Union industry to lower its prices in order to maintain a certain turnover, but at loss-making prices, to cover at least fixed costs. As a result, the financial situation of the Union industry deteriorated sharply from 2008.
- (127) Based on the above, it is provisionally concluded that the subsidised imports from India, which significantly undercut the prices of the Union industry during the IP, have had a determining role in the injury suffered by the Union industry, which is reflected in its poor financial situation and in the deterioration of almost all injury indicators.

6.3. Effect of other factors

- (128) The other factors which were examined in the context of causality are the economic crisis, the development of EU consumption, the cost of production, the imports from other third countries and the export performance of the sampled Union industry.
- 6.3.1. *The economic crisis, development of EU consumption and the cost of production*
- (129) The economic downturn contributed to the contraction in consumption and to the price pressure. The low level of demand for certain stainless steel bars resulted in the decrease in production by the Union industry and contributed to part of the depression of sales prices.
- (130) Under normal economic conditions and in the absence of strong price pressure from the subsidised imports, the Union industry might have had some difficulty in coping with the decrease in consumption and the subsequent increase in fixed costs of production due to low capacity utilisation it experienced between 2007 and the IP. The subsidised imports however have intensified the effect of the economic downturn and have made it impossible to sell at or above cost price between 2009 and the IP.

- (131) Based on the above, it appears that the decrease in EU demand linked to the economic crisis experienced in the sector contributed to the injury suffered by the Union industry. It is considered however that it does not break the casual link established in relation to the Indian low-priced subsidised imports.

6.3.2. Imports from other third countries

	2007	2008	2009	IP
Imports from other third countries in tonnes	27 089	23 242	12 837	14 036
<i>Index</i>	100	86	47	52
Market share from other third countries	8,6 %	8,14 %	6,89 %	6,95 %
<i>Index</i>	100	95	80	81
Average price of imports	4 820	4 487	3 756	3 501
<i>Index</i>	100	93	78	73

- (132) Based on Eurostat data, the volume of imports into the Union of certain stainless steel bars originating in third countries not concerned by this investigation decreased by 48 % over the period considered. The corresponding market share of the other third countries decreased by 19 %.

- (133) The average prices of these imports were above those of the Indian exporting producers and above those of the Union industry. Consequently, it is provisionally considered that imports from the other third countries did not contribute to the injury suffered by the Union industry.

6.3.3. Export performance of the sampled Union industry

	2007	2008	2009	IP
Export sales in tonnes	10 850	9 158	5 440	6 299
<i>Index</i>	100	84	50	58
Unit selling price in euro	4 452	3 728	2 495	2 388
<i>Index</i>	100	84	56	54

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- (134) During the period considered the volume of export sales of the sampled Union industry decreased by 42 % and unit selling price by 46 %. Although these exports accounted only for 6 % of its total sales during the IP, it can not be excluded that this performance has had a negative impact on the Union industry. But it is considered that, given the low volume of exports, the impact is not enough to break the causal link between the subsidised imports and the injury found.

6.4. Conclusion on causation

- (135) The investigation showed that the other known factors, such as imports from other third countries, exports by the Union industry and the decrease in consumption were not a determining cause for the injury suffered by the Union industry.
- (136) The coincidence in time between, on the one hand, the subsidised imports from India and the undercutting found and, on the other hand, the deterioration in the situation of the Union industry, leads to the conclusion that the subsidised imports caused the material injury suffered by the Union industry within the meaning of Article 8(5) of the basic Regulation.

7. UNION INTEREST

7.1. General considerations

- (137) In accordance with Article 31 of the basic Regulation it has been examined whether, despite the provisional finding of injurious subsidisation, compelling reasons exist for concluding that it is not in the Union interest to adopt measures in this particular case. The impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered.

7.2. Interest of the Union industry

- (138) The Union industry has been suffering from injurious subsidised imports of the product concerned from India. It is also recalled that most economic indicators of the Union industry showed a negative trend during the period considered. Taking into account the nature of the injury (i.e. significant losses), a further and substantial deterioration in the situation of the Union industry appears unavoidable in the absence of measures.
- (139) The imposition of measures is expected to prevent further distortions and restore fair competition on the market.
- (140) Should measures not be imposed, prices would continue to be below cost and the Union producers' profits would deteriorate further. This would be unsustainable in the medium to long-term. In view of the losses incurred and the high level of investment in production, it can be expected that most Union

producers would be unable to recover their investments should measures not be imposed.

- (141) In addition, given that the Union industry consists of medium-sized and big enterprises spread throughout the Union, the imposition of countervailing measures will help to maintain employment in these areas.
- (142) It is therefore provisionally concluded that the imposition of countervailing duties would be in the interest of the Union industry.

7.3. **Interest of importers**

- (143) All importers known to the Commission were asked to make themselves known and to provide basic information on their activities regarding the product concerned. Four importers replied to the sampling exercise. Questionnaires were sent to all four of them and only one importer replied. A verification visit at the premises of the importer, located in Germany, is envisaged for a later stage of the investigation.
- (144) Should countervailing duties be imposed, it cannot be ruled out that the level of imports originating in the country concerned may decrease, thus affecting the economic situation of the importers. However, the effect on importers of any increase in the prices of imports of the product concerned should only restore competition on the Union market and should not prevent the importers from selling the product concerned. In addition, the low proportion of the costs of the product concerned in the final users' total costs should make it easier for the importers to pass any price increase on to their customers. On this basis, it has been provisionally concluded that the imposition of countervailing duties is not likely to have a serious negative effect on the situation of importers in the Union.

7.4. **Interest of users**

- (145) Questionnaires were sent to all the parties named as users in the complaint. None of the twenty two companies replied.
- (146) It is recalled that the product concerned is used in a wide variety of applications including the automotive industry, domestic appliances producers, medical and laboratory instruments, etc. However, in this proceeding the users are intermediate companies that produce and supply the elements for the aforementioned applications. In view of that, it is expected that these users would be in a position to pass on all or almost all of the increase in prices resulting from the imposition of countervailing duties to the final users, bearing in mind that for the latter, the impact of such measures will be negligible.
- (147) It is therefore provisionally concluded that the impact on costs of the users resulting from the imposition of countervailing duties would be not significant.

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7.5. Conclusion on Union interest

- (148) In view of the above, it is provisionally concluded that there are no compelling reasons not to impose countervailing duties on imports of certain stainless steel bars originating in India.

8. PROPOSAL FOR PROVISIONAL COUNTERVAILING MEASURES

8.1. Injury elimination level

- (149) In view of the conclusions reached with regard to subsidisation, injury, causation and Union interest, provisional countervailing measures should be imposed in order to prevent further injury being caused to the Union industry by the subsidised imports.
- (150) For the purpose of determining the level of these measures, account was taken of the subsidy margins found and the amount of duty necessary to eliminate the injury sustained by the Union industry, without exceeding the subsidy margin found.
- (151) When calculating the amount of duty necessary to remove the effects of the injurious subsidisation, it was considered that any measures should allow the Union industry to cover its costs of production and to obtain a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of subsidised imports, on sales of the like product in the Union. It is considered that the profit that could be achieved in the absence of the subsidised imports should be based on the average pre-tax profit margin of the sampled Union producers in the year 2007. This is the last year before the IP where the Union industry was able to reach a normal profit margin. It is thus considered that a profit margin of 9,5 % of turnover could be regarded as an appropriate minimum which the Union industry could have expected to obtain in the absence of injurious subsidisation.
- (152) On this basis, a non-injurious price was calculated for the Union industry for the like product. The non-injurious price was obtained by adding the above mentioned profit margin of 9,5 % to the cost of production.
- (153) The necessary price increase was then determined on the basis of a comparison of the weighted average import price of the cooperating exporting producers in India, as established for the price undercutting calculations (see recital 101), with the non-injurious price of the products sold by the Union industry on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the average total CIF import value.

8.2. Provisional measures

- (154) In the light of the foregoing, it is considered that, in accordance with Article 12(1) of the basic Regulation, provisional countervailing measures should be

imposed in respect of imports originating in India at the level of the lower of the subsidy and the injury margins, in accordance with the lesser duty rule.

- (155) On the basis of the above, the countervailing duty rates have been established by comparing the injury elimination margins and the subsidy margins. Consequently, the proposed countervailing duty rates are as follows:

Company	Subsidy margin	Injury margin	Provisional CVD rate
Chandan Steel Ltd	3,4 %	28,6 %	3,4 %
Venus group	3,3 %	45,9 %	3,3 %
Viraj Profiles Vpl. Ltd	4,3 %	51,5 %	4,3 %
Cooperating non-sampled companies	4,0 %	44,4 %	4,0 %
All other companies	4,3 %	51,5 %	4,3 %

- (156) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to ‘all other companies’) are thus exclusively applicable to imports of products originating in India and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to ‘all other companies’.
- (157) Any claim requesting the application of these individual company countervailing duty rates (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⁽⁴⁾ 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. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.

9. DISCLOSURE

- (158) The above provisional findings will be disclosed to all interested parties which will be invited to make their views known in writing and request a

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EU) No 1261/2010. (See end of Document for details)

hearing. Their comments will be analysed and taken into consideration where warranted before any definitive determinations are made. Furthermore, it should be stated that the findings concerning the imposition of countervailing duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive findings,

HAS ADOPTED THIS REGULATION:

Article 1

1 A provisional countervailing duty is hereby imposed on imports of stainless steel bars and rods, not further worked than cold-formed or cold-finished, other than bars and rods of circular cross-section of a diameter of 80 mm or more, currently falling within CN codes 7222 20 21, 7222 20 29, 7222 20 31, 7222 20 39, 7222 20 81 and 7222 20 89 and originating in India.

2 The rate of the provisional countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and manufactured by the companies below shall be:

[^{XI}Company	Duty (%)	TARIC additional code
Chandan Steel Ltd, Mumbai	3,4	B002
Venus Wire Industries Pvt. Ltd, Mumbai; Precision Metals, Mumbai; Hindustan Inox Ltd, Mumbai; Sieves Manufacturer India Pvt. Ltd, Mumbai	3,3	B003
Viraj Profiles Vpl. Ltd, Thane	4,3	B004
Companies listed in the Annex	4,0	B005
All other companies	4,3	B999]

3 The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

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

Editorial Information

XI Substituted by [Corrigendum to Commission Regulation \(EU\) No 1261/2010 of 22 December 2010 imposing a provisional countervailing duty on imports of certain stainless steel bars originating in India \(Official Journal of the European Union L 343 of 29 December 2010\)](#).

Article 2

1 Without prejudice to Article 30 of Council Regulation (EC) No 597/2009, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 1 month of the date of entry into force of this Regulation.

2 Pursuant to Article 31(4) of Council Regulation (EC) No 597/2009, the parties concerned may comment on the application of this Regulation within 1 month of the date of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of 4 months.

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

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EU) No 1261/2010. (See end of Document for details)

ANNEX

INDIAN COOPERATING EXPORTING PRODUCERS NOT SAMPLED

[^{XI}TARIC Additional Code B005]

Company name	City
Ambica Steel Ltd	New-Delhi
Bhansali Bright Bars Pvt. Ltd	Navi-Mumbai
Chase Bright Steel Ltd	Navi-Mumbai
D.H. Exports Pvt. Ltd	Mumbai
Facor Steels Ltd	Nagpur
Global smelters Ltd	Kanpur
Indian Steel Works Ltd	Navi-Mumbai
Jyoti Steel Industries Ltd	Mumbai
Laxcon Steels Ltd	Ahmedabad
Meltroll Engineering Pvt. Ltd	Mumbai
Mukand Ltd	Thane
Nevatia Steel & Alloys Pvt. Ltd	Mumbai
Panchmahal Steel Ltd	Kalol
Raajratna Metal Industries Ltd	Ahmedabad
Rimjhim Ispat Ltd	Kanpur
Sindia Steels Ltd	Mumbai
SKM Steels Ltd	Mumbai
Parekh Bright Bars Pvt. Ltd	Thane
Shah Alloys Ltd	Gandhinagar

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Commission Regulation (EU) No 1261/2010. (See end of Document for details)

- (1) [OJ L 188, 18.7.2009, p. 93.](#)
- (2) [OJ C 87, 1.4.2010, p. 17.](#)
- (3) [OJ C 87 A, 1.4.2010, p. 1.](#)
- (4) European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

Changes to legislation:

There are currently no known outstanding effects for the Commission Regulation (EU) No 1261/2010.