I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1294/2004

of 12 July 2004

amending Regulation (EC) No 1600/1999 imposing a definitive anti-dumping duty on imports of stainless steel wire with a diameter of 1 mm or more originating in India

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 11(4) thereof,

Having regard to Council Regulation (EC) No 2026/97 [2] of 6 October 1997 on protection against subsidised imports from countries not members of the European Community, and in particular Article 20 thereof,

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

Whereas:

A. PREVIOUS PROCEDURES

(1) The Council, by Regulation (EC) No 1600/1999 [3], imposed a definitive anti-dumping duty on imports of stainless steel wire having a diameter of 1 mm or more (the product concerned) falling within CN code ex 7223 00 19 originating in India. The measures took the form of an *ad valorem* duty ranging between 0 % and 55,6 %.

(2) The Council, by Regulation (EC) No 1599/1999 [4], imposed at the same time a definitive countervailing duty on imports of the same product originating in India. The measures took the form of an *ad valorem* duty ranging between 0 % and 35,4 % for individual exporters, with a rate of 48,8 % for non-cooperating exporters.

B. CURRENT PROCEDURE

1. Request for a new exporter review

(3) Subsequent to the imposition of definitive measures, the Commission received a request for the initiation of a 'new exporter' review of Regulation (EC) No 1600/1999, pursuant to Article 11(4) of the basic Regulation, from one Indian producer, VSL Wires Limited (the applicant). The applicant claimed that it was not related to any other exporters of the product concerned in India. Furthermore, it claimed that it had not exported the product concerned during the original period of investigation (i.e. from 1 April 1997 to 31 March 1998), but had exported the product concerned to the Community after that period. On the basis of the above, it requested that an individual duty rate be established for it, in case dumping would be found.

2. Initiation of a review

(4) The Commission examined the evidence submitted by the applicant and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 11(4) of the basic Regulation. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by Commission Regulation (EC) No 1225/2003 [5], a 'new exporter' review of Regulation (EC) No 1600/1999 with regard to the applicant and commenced its investigation. At the same time, the anti-dumping duty in force was repealed with regard to imports of the product concerned produced and exported to the Community by the applicant, and those imports were made subject to registration pursuant to Articles 11(4) and 14(5) of the basic Regulation.

(5) At the same time and on the same grounds, following a request from the applicant, the Commission initiated an accelerated review of Regulation (EC) No 1599/1999 [6] pursuant to Article 20 of Regulation (EC) No 2026/97.

3. Product concerned

(6) The product covered by the current review is the same product as that under consideration in Regulation (EC) No 1600/1999, namely stainless steel wire having a diameter of 1 mm or more, containing by weight 2,5 % or more of nickel, excluding wire containing by weight 28 % or more but no more than 31 % of nickel and 20 % or more but no more than 22 % of chromium.

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[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[2] OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004.
[3] OJ L 189, 22.7.1999, p. 19.
[4] OJ L 189, 22.7.1999, p. 1. Regulation as amended by Regulation (EC) No 164/2002 (OJ L 30, 31.1.2002, p. 9).
[5] OJ L 172, 10.7.2003, p. 6.
[6] OJ C 161, 10.7.2003, p. 2.

4. **Investigation period**

(7) The investigation covered the period from 1 April 2002 to 31 March 2003 (the review investigation period).

5. **Parties concerned**

(8) The Commission officially advised the applicant and the Government of India (GOI) of the initiation of the procedure. Furthermore, it gave other parties directly concerned the opportunity to make their views known in writing and to request a hearing. However, no such views or any request for a hearing was received by the Commission.

(9) The Commission sent a questionnaire to the applicant and received a full reply within the required deadline. The Commission sought and verified all information it deemed necessary for the purpose of the investigation and carried out a verification visit at the premises of the applicant.

C. **SCOPE OF THE REVIEW**

(10) As no request for a review of the findings on injury was made by the applicant, the review was limited to dumping.

D. **RESULTS OF THE INVESTIGATION**

(11) The applicant was able to satisfactorily demonstrate that it was not related, directly or indirectly, to any of the Indian exporting producers subject to the anti-dumping measures in force with regard to the product concerned.

(12) The investigation confirmed that the applicant had not exported the product concerned during the original investigation period, i.e. from 1 April 1997 to 31 March 1998.

(13) The Commission examined whether the applicant had exported the product concerned to the Community subsequent to the original investigation period. In this respect, it was established that the applicant has not realised any sales whatsoever to the Community and neither has it entered into an irrevocable contractual obligation to export a significant quantity to the Community of the product concerned during the review investigation period.

(14) It was established that the applicant had only realised one sale to the Community which actually took place in August 2001, i.e. after the original investigation period but well before the review investigation period.

(15) The applicant requested the Commission to extend the review investigation period to cover the period in which the sale mentioned in recital 14 was realised. In this respect, the applicant argued that it had requested the 'new exporter' review in August 2001 and proposed an investigation period from 1 July 2001 to 31 March 2003.

In that respect, it should be pointed out that pursuant to Article 6(1) of the basic Regulation, for the purpose of a representative finding, the Commission shall select an investigation period which, in the case of dumping, shall normally cover a period of not less than six months immediately prior to the initiation of the proceeding. The fact that it took almost two years and numerous exchanges of correspondence before the applicant submitted a satisfactory review request does not justify departing from the rule set out in Article 6(1) of the basic Regulation. Moreover, the acceptance of such an extended investigation period, coupled with the fact that it would only cover that export transaction, could lead to a situation where outdated data and accounting information would be used and considerably undermine the accuracy of the findings of the investigation in relation to the current situation of the applicant.

Furthermore, it should be noted that, even if such a long review investigation period was selected and the single sale of August 2001 included, this single sale would not constitute a representative basis for the assessment of dumping and the establishment of an individual dumping margin. The single transaction represented only around 0,2 % of the applicant's annual production of the product concerned and its price was double the export price of the same product to all other third countries during that period. Consequently, such a sale could not be used for a representative dumping determination for the applicant.

(16) In reply to the questionnaire, the applicant identified a contract that had been signed during the review investigation period, but on spot confirmed that the sale had never been materialized. It is therefore established that the applicant has not entered into an irrevocable obligation to export a significant quantity to the Community and that the applicant's statement of 'intent to continue the export to EC' following the 2001 sale has not been materialized. For the above reasons, it is considered that in the absence of any export transaction to the Community or any irrevocable contractual obligation during the review investigation period, no individual dumping margin can be established for the applicant in accordance with the provisions of Article 11(4) of the basic Regulation. Thus, the dumping margin found in the original investigation for parties not individually investigated, i.e. 76,2 % (see recital 23 of Regulation (EC) No 1600/1999), should apply.

E. **THE ANTI-DUMPING DUTY**

(17) Given that the highest injury elimination level of 55,6 % established during the original investigation is lower than the 76,2 % dumping margin set for the applicant (see recital 16), the anti-dumping duty rate for the applicant should not be higher than this injury elimination level in accordance with Article 9(4) of the basic Regulation.

(18) Despite the lack of exports to the Community during the review investigation period, an individual countervailing duty rate based on the export subsidy amount (*ad valorem* 14,1 %), was calculated for the applicant in the parallel accelerated review of Regulation (EC) No 1599/1999, pursuant to Article 20 of Regulation (EC) No 2026/97 (see recital 5).

(19) In accordance with Article 14(1) of the basic Regulation and Article 24(1) of Regulation (EC) No 2026/97, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation.

(20) On the basis of the above, the definitive anti-dumping duty rate imposed for imports into the Community of stainless steel wire with a diameter of 1 mm or more produced and exported by VSL Wires Limited, expressed as a percentage of the CIF Community frontier price (customs duty unpaid) and taking into account the results of the parallel accelerated review of the countervailing measures in force, should be 41,5 %, i.e. 55,6 % minus 14,1 %. Regulation (EC) No 1600/1999 should therefore be amended accordingly.

F. **RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY**

(21) The anti-dumping duty applicable to VSL Wires Limited shall also be levied retroactively on imports which have been subject to registration pursuant to Article 3 of Commission Regulation (EC) No 1225/2003.

G. **DISCLOSURE AND DURATION OF THE MEASURES**

(22) The Commission informed the applicant and the GOI of the essential facts and considerations on the basis of which it was intended to propose that Regulation (EC) No 1600/1999 be amended. They were also given a reasonable period of time to comment.

(23) In its response to the disclosure, the applicant claimed that the Commission failed to consider other available alternatives for establishing export price and in particular the use of the applicant's export prices to other third countries for the purpose of dumping margin calculations. In this respect, it should be noted that in accordance with Article 2(8) of the basic Regulation, the export price in a dumping calculation shall be the price actually paid or payable for the product when sold for export from the exporting country to the Community. There is no provision whatsoever that the export price can also be established on the basis of exports from the exporting country to destinations other than the Community. The claim should therefore be rejected and the conclusions set out in recitals 11 to 16 confirmed.

(24) This review does not affect the date on which Regulation (EC) No 1600/1999 will expire pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 1(2) of Regulation (EC) No 1600/1999 is hereby amended by adding the following:

'VSL Wires Limited, G-1/3 MIDC, Tarapur Industrial Area, Boisar District, Thane, Maharashtra, India	41,5	A444'

Article 2

1. The anti-dumping duty hereby imposed shall also be levied retroactively on imports of the product concerned which have been registered pursuant to Article 3 of Commission Regulation (EC) No 1225/2003.

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

Article 3

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

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

Done at Brussels, 12 July 2004.

For the Council
The President
B. BOT