



2024/3201

19.12.2024

COMMISSION IMPLEMENTING REGULATION (EU) 2024/3201

of 18 December 2024

amending Implementing Regulation (EU) 2024/1268 extending the definitive countervailing duties imposed by Implementing Regulation (EU) 2022/433 on imports of stainless steel cold-rolled flat products originating in Indonesia to imports of stainless steel cold-rolled flat products consigned from Taiwan, Türkiye and Vietnam, whether declared as originating in Taiwan, Türkiye and Vietnam or not

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁾, and in particular Article 23 thereof,

Whereas:

- (1) By Implementing Regulation (EU) 2022/433 ⁽²⁾, the European Commission (the ‘Commission’) imposed definitive countervailing duties on imports of stainless steel cold-rolled flat products (‘SSCR’) originating in, inter alia, Indonesia following an anti-subsidy investigation (‘the original anti-subsidy investigation’). The measures took the form of an ad valorem duty ranging between 0 and 21,4 %, with a residual duty for all non-cooperating Indonesian companies of 20,5 % (‘the original AS measures’).
- (2) On 3 July 2023, pursuant to Articles 23(4) and 24(5) Regulation (EU) 2016/1037 (the ‘basic AS Regulation’), the European Steel Association (EUROFER) filed a request to investigate the possible circumvention of the original AS measures by imports of SSCR consigned from Taiwan, Türkiye and Vietnam. On 15 August 2023, based on the request, which was found to be well-founded, by Implementing Regulation (EU) 2023/1631 ⁽³⁾, the Commission initiated an anti-circumvention investigation (‘the anti-circumvention investigation’).
- (3) Following the anti-circumvention investigation, by Implementing Regulation (EU) 2024/1268 ⁽⁴⁾, the Commission extended the residual duty of 20,5 % to imports of SSCR consigned from Taiwan, Türkiye and Vietnam, whether declared as originating in Taiwan, Türkiye and Vietnam or not. A number of producers in Taiwan, Türkiye and Vietnam that requested exemptions and were found not to be engaged in any circumvention practices were granted exemptions from the extension of the duty. Lam Khang Joint Stock Company (‘Lam Khang’), one of Vietnamese producers that requested an exemption from the extension of the duties was refused such exemption for the reasons set out in recitals (173)-(175) of Implementing Regulation (EU) 2024/1268.

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia (OJ L 88, 16.3.2022, p. 24).

⁽³⁾ Commission Implementing Regulation (EU) 2023/1631 of 11 August 2023 initiating an investigation concerning possible circumvention of the countervailing measures imposed by Implementing Regulation (EU) 2022/433 on imports of stainless steel cold-rolled flat products originating in Indonesia, by imports of stainless steel cold-rolled flat products consigned from Taiwan, Türkiye and Vietnam, whether declared as originating in Taiwan, Türkiye and Vietnam or not, and making imports of stainless steel cold-rolled flat products consigned from Taiwan, Türkiye and Vietnam subject to registration (OJ L 202, 14.8.2023, p. 10).

⁽⁴⁾ Commission Implementing Regulation (EU) 2024/1268 of 6 May 2024 extending the definitive countervailing duties imposed by Implementing Regulation (EU) 2022/433 on imports of stainless steel cold-rolled flat products originating in Indonesia to imports of stainless steel cold-rolled flat products consigned from Taiwan, Türkiye and Vietnam, whether declared as originating in Taiwan, Türkiye and Vietnam or not (OJ L, 2024/1268, 7.5.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/1268/oj).

- (4) On 3 July 2024, Lam Khang lodged an application pursuant to Article 263(4) of the Treaty on the Functioning of the European Union for the annulment of Implementing Regulation (EU) 2024/1268 with the General Court of the European Union.
- (5) In their application to the General Court, Lam Khang argued, amongst other things, that the Commission, when addressing a claim made by Lam Khang after disclosure, had committed a factual error in its analysis of certain evidence provided during the investigation.
- (6) A revision of the data indeed showed that to establish the price difference between grade 304 stainless steel hot-rolled coils ('304 SSHR') that Lam Khang imported from Indonesia and those from other sources, as mentioned in recital (173) of Implementing Regulation (EU) 2024/1268, the Commission used an incomplete set of data. When using the complete dataset, the purchase price of Lam Khang for Indonesian 304 SSHR was, on average, higher than that from other suppliers.
- (7) Consequently, the conclusion in recital (174) of Implementing Regulation (EU) 2024/1268 that parts of the imported like product were benefitting from subsidies found in the original investigation could not be drawn based on the price differences as set out in recital (173) of that Regulation. Considering that as regards Lam Khang there was no other evidence indicating that parts of the imported like product were benefitting from subsidies found in the original investigation, the Commission concluded that Lam Khang met the requirements for an exemption under Article 23(6) of the basic AS Regulation and thus its exemption request should have been granted.
- (8) Therefore, Implementing Regulation (EU) 2024/1268 should be amended accordingly.
- (9) Lam Khang's exemption from the countervailing duties applies since the entry into force of Implementing Regulation (EU) 2024/1268 (namely, as of 8 May 2024). Customs authorities are instructed not to collect the duties imposed pursuant to Article 1(1) of Implementing Regulation (EU) 2024/1268 as regards goods manufactured by Lam Khang and refund any excess amount collected so far in accordance with the applicable customs legislation.
- (10) Finally, for administrative reasons not related to the above, it was considered appropriate to change the TARIC additional code of the Taiwanese exporting producer Chia Far Industrial Factory Co., Ltd.
- (11) On 3 October 2024, the Commission disclosed to all interested parties the essential facts and considerations leading to the above conclusions and invited them to comment.
- (12) In their comments on disclosure EUROFER opposed the amendment, putting forward several claims. EUROFER's complaints were grouped as those related to the procedure followed by the Commission and those concerning the substance of the amendment. Both groups of claims are summarised and addressed below.
- (13) Regarding the procedure, EUROFER argued that in seeking '*to avoid the General Court procedure*' by its amendment the Commission acted without a legal basis. The Commission either initiated a de facto partial review of the measures without following the applicable procedures or continued the investigation in violation of the applicable deadline. Either way, essential procedural requirements were allegedly violated. According to EUROFER, Commission may re-open a concluded investigation only in case of ruling of the Court or '*upon a decision to enforce recommendations of the WTO dispute settlement body*'. Finally, the Commission allegedly failed to properly disclose its intention to correct the error and grant the exemption to Lam Khang as the disclosure took place after the closure of the investigation.

- (14) As explained in recitals (6) and (7), in the context of a proceeding before the General Court, the Commission identified a factual error underpinning its reasoning for not granting the exemption to Lam Khang. Contrary to the claim, the case-law referred to by EUROFER in its comments ⁽⁷⁾ does not limit the Commission's ability to reopen investigations only to cases where there is a Court ruling or a WTO dispute settlement recommendation. It has long been recognised that if an error is identified after the administrative procedure has closed, the Commission retains the ability to correct the error at the stage at which it was made ⁽⁸⁾. The Commission is not required to recommence the procedure by going back further than that precise point ⁽⁷⁾. The error identified by the Commission in the present case was committed at the final stage of the investigation, i.e. during the assessment of the comments on disclosure. The price comparison containing the error, whilst addressing the comments on disclosure, was supporting the conclusion initially reached by the Commission and therefore it was not re-disclosed to Lam Khang. In other words, Lam Khang had no opportunity to comment on the accuracy of the price comparison during the investigation. However, at that stage the Commission had the details it needed for the required new analysis and therefore had no obligation to recommence the preparatory inquiries in the case ⁽⁸⁾. Considering that both Lam Khang's and EUROFER's right to a fair hearing and to be involved in the procedure was observed when the original decision was adopted (EUROFER made no allegation to the contrary), the amendment does not require the formal investigation procedure to be reopened ⁽⁹⁾. It follows that EUROFER's complaints concerning the legal basis for the amendment, procedural steps taken and the disclosure were unfounded and thus dismissed by the Commission. The Commission further noted that EUROFER was given the opportunity to comment on the proposed amendment and thus its procedural rights were fully respected.
- (15) Regarding the substance, EUROFER argued that despite the error described in in recitals (6) and (7), *'the parts used by Lam Khang clearly continue to benefit from the subsidies found in the original investigation'*. This claim was premised on the assumption that when assessing whether *'the imported like product and/or parts thereof still benefit from the subsidy'* under Article 23(3) of the basic Regulation the *'determinative factor is whether these subsidies continue to apply'*. According to EUROFER the price comparison test, where the errors were made, was not permissible. This claim was supported by the fact that no additional tests were conducted when establishing country-wide circumvention for Vietnam and circumvention for Trixon TNT and Yongjin. Moreover, the price comparison was allegedly meaningless since the prices of SSHR from China themselves were unfairly priced, benefited from subsidisation and the comparison did not take into consideration product types.
- (16) To recall, the original investigation found that not only the production of SSCR, but also the parts used to produce SSCR, including SSHR and slabs benefited from subsidisation ⁽¹⁰⁾. The anti-circumvention investigation found no evidence that this subsidisation ceased, or that the slabs and SSHR produced in Indonesia stopped benefitting from the subsidies, or that such parts imported into Vietnam no longer benefitted from them ⁽¹¹⁾. It was therefore concluded that parts of the imported like product were still benefiting from the subsidies. That conclusion was challenged by Lam Khang, arguing that, based on EU and WTO case-law, the presumption of pass-through of subsidisation in the case of arm's length transactions between unrelated parties was not allowed. Since Lam Khang purchased its Indonesian inputs from unrelated traders, the only evidence suggesting that the relevant transactions were not at arm's length was a price comparison, which was proven to be erroneous. The Commission noted that EUROFER does not contest the existence of the error described in recitals (6) and (7).

⁽⁷⁾ Judgment of 28 January 2016, *CM Eurologistik*, joined cases C-283/14 and C-284/14 ECLI:EU:C:2015:628, paragraphs 57-61.

⁽⁸⁾ See for instance judgment of 19 May 2021, *CCCME v Commission*, T-254/18, ECLI:EU:T:2021:278, paragraph 64 and the case-law cited.

⁽⁷⁾ See, to that effect, judgments of 12 November 1998, *Spain v Commission*, C 415-96, ECLI:EU:C:1998:533, paragraph 31; 3 October 2000, *Industrie des poudres sphériques v Council*, C 458-98 P, ECLI:EU:C:2000:531, paragraph 82; and, 9 July 2008 in *Alitalia v Commission*, T-301/01, ECLI:EU:T:2008:262, paragraphs 99 and 142.

⁽⁸⁾ See to that effect judgment of 12 May 2011, *Région Nord-Pas-de-Calais v Commission*, T-267/08, ECLI:EU:T:2011:209, paragraph 83.

⁽⁹⁾ *Ibid.*, paragraph 84.

⁽¹⁰⁾ Implementing Regulation (EU) 2024/1268, recital (126).

⁽¹¹⁾ *Ibid.*, recital (127).

- (17) Continued subsidisation of parts, in the absence of evidence to the contrary, may be sufficient to conclude that subsidies continue to benefit parts in third countries. However, such a conclusion may be refuted on the basis of further evidence. In the case at hand, that conclusion was not challenged for Vietnam as a whole or for Trixon TNT and Yongjin. However, the conclusion for the country as a whole was shown to be inappropriate in the particular case of Lam Khang due to the way it was purchasing the parts in question, rendering further tests (including price comparison) not only permissible but necessary to examine whether subsidies continued to benefit the parts purchased by Lam Khang. Regarding the appropriateness of price comparisons between Chinese and Indonesian inputs, the Commission noted that such comparison was the only evidence available to the Commission demonstrating that prices paid by Lam Khang were not at arm's length. Given that neither EUROFER nor any other interested party provided other evidence to show that the relevant prices were not at arm's length, the conclusion that there was no evidence that parts used by Lam Khang benefited from subsidies must stand. The substantive claims of EUROFER were therefore rejected.
- (18) Finally, EUROFER argued that, since the Commission used 'post investigation information' to review its finding, 'it should also review the exemptions granted to other companies based on such "new facts":' EUROFER then argued that the Commission should re-open the investigation and essentially look into imports from China being actually from Indonesia.
- (19) As explained in recital (14), the Commission did not revise its finding based on 'post investigation information', but corrected an error which was made during the anti-circumvention investigation and on the basis of the information already on file. This claim was therefore rejected.
- (20) The Committee established by Article 25(1) of Regulation (EU) 2016/1037 did not provide an opinion on the measures provided for in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2024/1268 is amended as follows:

- (1) Recitals (173), (174) and (175) are replaced by the following:

'(173) However, the Commission did not find evidence that parts of the imported like product were benefitting from subsidies found in the original investigation.

(174) The Commission concluded from the prices of Indonesian SSHR paid by Lam Khang that parts of the imported like product were not benefitting from subsidies found in the original investigation.

(175) In view of the above, the Commission concluded that the request for exemption of Lam Khang should be accepted.;

- (2) in Article 1, paragraph 1 is replaced by the following:

'1. The definitive countervailing duty imposed by Implementing Regulation (EU) 2022/433 on imports of flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced) originating in Indonesia is hereby extended to imports of flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced), currently falling under CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20 and 7220 90 80, consigned from Taiwan, Türkiye and Vietnam whether declared as originating in Taiwan, Türkiye and Vietnam or not (TARIC codes 7219 31 00 10, 7219 31 00 20, 7219 32 10 10, 7219 32 10 20, 7219 32 90 10, 7219 32 90 20, 7219 33 10 10, 7219 33 10 20, 7219 33 90 10, 7219 33 90 20, 7219 34 10 10, 7219 34 10 20, 7219 34 90 10, 7219 34 90 20, 7219 35 10 10, 7219 35 10 20, 7219 35 90 10, 7219 35 90 20, 7219 90 20 10, 7219 90 20 20, 7219 90 80 10, 7219 90 80 20, 7220 20 21 10, 7220 20 21 20, 7220 20 29 10, 7220 20 29 20, 7220 20 41 10, 7220 20 41 20, 7220 20 49 10, 7220 20 49 20, 7220 20 81 10, 7220 20 81 20, 7220 20 89 10, 7220 20 89 20, 7220 90 20 10, 7220 90 20 20, 7220 90 80 10 and 7220 90 80 20), with the exemption of those produced by the companies listed below:

Country	Company	TARIC additional code
Taiwan	Chia Far Industrial Factory Co., Ltd.	C030
Taiwan	Tang Eng Iron Works Co., Ltd. Tung Mung Development Co., Ltd. Walsin Lihwa Corporation Yieh United Steel Corporation Yuan Long Stainless Steel Corp.	89AH
Türkiye	Posco Assan TST Celik Sanayi A.Ş.	89AK
Vietnam	Posco VST Co., Ltd. Lam Khang Joint Stock Company	89AJ'

(3) Article 4 is replaced by the following:

'Article 4

The exemption requests submitted by Trinox Metal Sanayi ve Ticaret A.Ş. (Türkiye) and Yongjin Metal Technology (Vietnam) Company Limited (Vietnam) are rejected.'

Article 2

Any definitive countervailing duty collected pursuant to Article 1(1) of Implementing Regulation (EU) 2024/1268 as regards goods manufactured by Lam Khang Joint Stock Company shall be repaid or remitted.

The repayment or remission shall be requested from national customs authorities in accordance with the applicable customs legislation.

Article 3

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

It shall apply as of 8 May 2024.

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

Done at Brussels, 18 December 2024.

For the Commission
The President
Ursula VON DER LEYEN