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Our Ref AD 670/ Final Disclosure

Your Ref

Brussels, 26 August 2021

European Commission
DG TRADE
Directorate G - Trade Defence
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Version open for inspection by interested parties

Case AD670 - Anti-dumping proceeding concerning imports of stainless steel cold-rolled flat products originating in India and Indonesia – Final disclosure – European Association of Non-

Integrated Steel, Stainless Steel and Metal Importers, Distributors, Traders and Processors (hereinafter "EURANIMI") comments.

Dear Case Team,

We hereby provide our comments regarding the General/Final Disclosure document in the above mentioned investigation.

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1. Cumulative assessment of the effects of imports from the countries concerned.

In recitals 62 to 67 of the General Disclosure document (hereinafter GDD) the Commission argues that:

"*(62) The consortium of importers and distributors and one unrelated importer contested the cumulative assessment of the effects of the Indian and Indonesian imports on the Union industry's situation. The interested parties argued that the import volumes from both countries are low, the trend in imports from India (decreasing slightly) and Indonesia (increasing rapidly) throughout the period concerned is different and no proper assessment of the conditions of competition between imported products and between the imported products and the like Union products was conducted as requested by Article 3(4) of the basic Regulation.*

(63) In its comments submitted after provisional disclosure, the complainant opposed the claim made by the consortium and the unrelated importer setting out that import trends are irrelevant to the application of Article 3(4) of the basic Regulation, that the conditions of competition were duly assessed, and that a cumulated assessment ensures a non-discriminatory application of duties.

(64) The Commission found that the requirements to cumulatively assess the imports were met. The import volume from each of the two countries concerned was not negligible, i.e. over 1% of market share each, and the conditions of competition justified a cumulative assessment, as the imported products share the same basic physical, chemical and technical characteristics with the products sold by the Union producers and have the same basic uses. This is reflected in the high level of matching of the product types imported from Indian and Indonesia to the product types sold by the Union producers.

(65) Moreover, it was established that the product types imported from India and Indonesia are to a large extent similar to each other and the level of their respective prices are comparable.

(66) Furthermore, like the complainant indicated, Article 3(4) of the basic Regulation does not require a comparison of the import trends between the countries concerned. The claim is therefore rejected.

(67) In the absence of any other comments with regard to cumulative assessment of the effects of imports from the countries concerned, the Commission confirmed all other conclusions set out in recitals (93) to (98) of the provisional Regulation."

First of all, EURANIMI intends to draw attention to the fact that the Commission, in defiance of its right to defence, has once again rejected the request for disclosure (see Comments on Provisional Regulation of 15.6.2021- **Annex 1**) of:

- The theoretical models, of course in a non-confidential version, and/or the methodology used to assess the conditions of competition in the EU market of the products and countries at issue

- the check if the Directorate General of Competition, as well as the services in charge of economic analysis by the European Commission, have been consulted concerning such matter.

Secondly, the Commission's assertion in recitals 64 and 65 of the GDD is completely unfounded. Neither within the Provisional Regulation nor in the GDD is there any statistical analysis that can support what the Commission assertion in the aforementioned recitals.

Indeed, from the data reported in recital 96 of the Provisional Regulation, contrary to the Commission's claim in the above recitals, it is clear that the volume of the market share of imports for India and Indonesia was low compared to the market share of the EU industry. In fact, India accounted for only 3.4% of imports while Indonesia represented 2.8%. Regarding, particularly, the imports during the IP, the imports from India expressed in tonnage volumes were much lower than the imports from India in the years 2017 and 2018 and substantially similar to the imports from India in the year 2019.

The import quotas of the product concerned from India are limited by the safeguard measure: India has a country quota while Indonesia falls within the “third countries” quota. Any extra-quota quantities are subject to duty of 25% *ad valorem*.

The above impacts on the appropriateness and lawfulness of the Commission in applying Article 3(4) of the Basic Regulation. Imports from India were stable and even decreased during the IP.

Taking the above specific features of the case into account, the analysis of the condition of competition mandated by Article 3(4) of the Basic Regulation is warranted in the instant case.

In this regard, it should be recalled that pursuant to Article 3 (4) (b) if imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports can only be cumulatively assessed if it is established that ***the cumulative assessment of the effects of the dumped imports is appropriate in the light of the conditions of competition between the imported products and between them and the like Union product.***

Once again, the Commission confines itself to affirming in this regard that "..... **the conditions of competition justified a cumulative assessment, as the imported products share the same basic physical, chemical and technical characteristics with the products sold by the Union producers and have the same basic uses…"** without carrying out or, at least, disclosing the analysis carried out of the real conditions of competition subsisting between the imported products and those produced within the European Union (see recital 64 of the GDD).

Furthermore, the analysis of the above mentioned data, on the basis of the comparison between European production and imports from Indonesia and India, revealed an inconsistency in the regulation that imposed the provisional duties**.**

Finally, the services of DG TRADE have failed to carry out, at least, one substitution analysis of the basic market for the products in question and also completely missing a substitution analysis of the basic offer**.**

In light of the above, <u>in the present case the cumulation provided for in Article 3 (4) of the Basic Regulation is not applicable,</u> contrary to what is claimed by the Commission, since:

- imports from India were stable and even decreased during the IP;

- the analysis of the conditions of competition that need to be performed by the European Commission in order to be able to apply such provision and the cumulative assessment of import is totally missing or, at least, highly deficient from a technical point of view.

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2. Volume and market share of imports from the countries concerned

Contrary to what the Commission argued in recital 68 of the GDD, the conclusions set out in recitals 99 to 101 of the Provisional Regulation cannot be confirmed.

In this regard, EURANIMI also intends to draw the attention of the Commission to the fact, as recalled in its submission of 28.6.2021, that:

1) Indonesia's import volumes increased albeit of a very low percentage simply because this state is a new exporter of the products at issue to the EU. Arguing that such very limited amount of exports to the EU must immediately be hit by anti-dumping duties is closer to argue that there should be an import ban on such kind of Indonesia's products, in breach of Article XI GATT 1994.

2) India's imports expressed in tonnes volumes were much lower than India's imports in years 2017 and 2018 and substantially similar to imports from India in year 2019.

3) The complainant companies had an increase in profits, as confirmed in their balance sheets.

The above proves that a potential increase in the market share of India and Indonesia - even if assessed cumulatively (which we have seen the above should not be the case) - had no impact on the market share of the Union industry, as it was taken from other third countries, without damaging the market share of the Union industry.

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3. Prices of the imports from the countries concerned and price undercutting

In recitals 60 to 71 of the GDD the Commission sets out the following:

"(*69) In recital (105) of the provisional Regulation, the Commission stated that it found undercutting margins of 4,8 % and 13,4 % for the Indian exporting producers.*

(70) However, these margins contained a clerical error and should be corrected to undercutting margins of 5,8 % and 13,4 %.

(71) In the absence of any comments with regard to the prices of imports from the countries concerned and price undercutting, the Commission confirmed all conclusions set out in recitals (102) to (105) of the provisional Regulation, with the correction done as explained in paragraph (70) above".

Also in this case we are faced with a statement by the Commission without any legal basis.

In fact, neither from the recitals of the Provisional Regulation nor from the recitals of the GDD, in disregard of the rights of the defence, it is possible to reconstruct on the basis of which criteria the values indicated therein were determined, nor how the Commission proceeded to correct the material error reported to the recital 70 of the GDD.

The Commission is therefore requested to disclose, before proceeding with the imposition of definitive duties, the data and criteria it used to determine both the import prices of the product concerned and to calculate the udercutting margin.

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4. Macroeconomic indicators

Contrary to what the Commission maintains in recital 78 of the GDD, the conclusions set out in recitals from 111 to 121 cannot be confirmed.

Recital (114) and Table 5, related to sales volume and market share, show the EU industry market share has increased by 2.1% in the IP, if compared to year 2017. Such market share quota is almost the same of the one of the year 2018 and substantially similar to the one of the year 2019. This is clearly an indicator of "absence of injury" rather than of "presence of injury".

This proves that a potential increase in the market share of India and Indonesia, even if assessed cumulatively (which we have seen the above should not be the case), had no impact on the market share of the Union industry, as it was taken from other third countries without damaging the market share of the Union industry.

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5. Microeconomic indicators

Contrary to what the Commission maintains in recital 78 of the GDD, the conclusions set out in recitals from 122 to 133 cannot be confirmed, as in these considerations there is no evidence that the decrease in margins of European producers is linked to the trend of imports from India and Indonesia. In particular, imports from India are stable around 3% so it is impossible that they have negatively influenced the market.

The negative profitability trend is not linked to imports from India and Indonesia: volumes are low and cannot influence the market in such a marked way. The real causes of the reduction in profitability are other, such as eg. the pandemic period, competitive dynamics of European producers, imports from other countries (eg South Korea - see table 11 of the Provisional Regulation).

At the same time, the complainant companies had an increase in profits as confirmed in their balance sheets (see submission of 28.6.2021 - **Annex 2**).

The fact that the financial statements are "not audited" is not significant, because they are public quarterly financial statements, obtained on the sites of producers who are listed companies. The data are therefore fully valid and usable, much more than audited one because published directly by the company (in the contrary they were liable to be charged with false). The data updated to 30/6/2021 of the three main producers have been further improved (**Annexes 3-4-5**).

In light of the above, contrary to what the Commission claimed, the Union industry did not suffer any obvious injury.

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6. Various

It is also worth contesting further considerations made by the Commission in the General Disclosure:

- First of all, what the Commission says in recital 11 about the lack of comments on the investigation period is not true: in the submission sent on 15 June 2021 (page 9), Euranimi had - in fact - immediately pointed out that the effects of the Covid 19

pandemic needed to be thoroughly investigated because the IP included an extraordinary pandemic period.

- Recital 87 of the GDD mentions 13 European producers: the Commission is asked to specify who these producers are, also in view of the fact that in the same complaint only seven European producers were named by the complainants.

- It is not clear how the undercutting margins on India between 5.8% and 13.4% were calculated, nor how it is possible that, against these undercutting margins, duties of 14.3% and 35.3% were then indicated. It is also not clear how it is possible that when Indian sales prices are higher than those from Indonesia, the duty applied to Indian producers is higher.

- Nor is there any way of verifying the sales figures of European producers, which are not retrievable from public databases, unlike the quantities imported from third countries. It is therefore requested that the Commission provide the sales data of each individual European producer, separating the quantities sold to third parties and related parties with the relevant average prices.

- In recital 71, the Commission refers, inter alia, to paragraph 104 of the provisional disclosure, where it stated that import prices were appropriately adjusted for import costs and that the prices of the European producers were adjusted for delivery costs and reported at a CIF value: These data were also not provided.

- In addition, it was not specified whether prices were also equalised in terms of payment terms: indeed import prices are partly paid in advance and partly at sight at the moment of shipment, all secured by a letter of credit; whereas European prices are inclusive of deferred payments of 60 or 90 days and of a credit insurance that the producer pays to major companies in order to have the credits secured.

- At recital 76, the Commission did not justify the discrepancy found, merely indicating that the data "cannot be fully matched". Instead, it is considered necessary that the data must match, as they cannot otherwise be considered correct and usable.
  In this regard, we reiterate the need to have evidence of:
  a. the nominal, actual and effectively used production capacity of each individual producer, bearing in mind that nominal capacity is not equal to actual capacity: for

example, a plant may nominally produce 100,000 tonnes, but in practice it can never exceed lower values, due to maintenance, production mix, etc;

b. the quantity actually produced for each year, for each EU producer;
c. the import volumes of the individual EU producers from the countries under investigation.

Imports made by companies belonging to the same group as EU producers (upstream holding company owning an EU producer but also distribution companies) must also be included in this data, in order to verify imports made by the same EU producers through companies belonging to the same group and thus ascertain that imports are partly influenced by the EU producers themselves.

- In contradiction with recital 76, the Commission states in recital 77 that at least half of the discrepancy is due to sales to related users, without giving any details.

- The average sales volumes and prices of the EU producers vs. unrelated customers have not been split between sales to users and sales to distributors. The EU producers sell a lot to end-users; however, the sales prices include a processing margin which has to be adjusted, otherwise it is not comparable with the average import prices from India and Indonesia which concern mainly sales to distributors and processors.

- **It must also be disputed that recital 107 refers: the EU industry does not have the capacity to meet all European demand, let alone 150% of it!**

  We ask for documentary evidence of this.

  European producers are currently unable to meet internal EU demand, and the proof is that they offer no material or only limited quantities with Q1 2022 delivery.

  It makes no sense to impose duties in such a situation, nor to claim that European producers have the capacity to supply the almost 150 % of EU consumption.

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7. Union Interest

The Commission's statement in recital 104 of the GDD out the following:

"(104) Euranimi and one unrelated importer claimed that the Union imposition of measures on India and Indonesia would create a shortage of SSCR on the Union market as the Union production would be insufficient to supply the market in full and other sources of supply are limited, mainly due to the antidumping measures on imports from China and Taiwan. According to the parties these shortages and delays in supplies can already be observed on the Union market."

EURNIMI argued from the outset that the imposition of new duties is not in the interest of the Union.

According to EURANIMI, currently, users of SSCR are faced in a uncoherent situation of shortage of raw materials, on the one hand, due to the insufficient EU production and supply, and on the other hand caused by the being in place of an arsenal of protective barriers to imports in form of antidumping duties on SSCR, as well as safeguards measures as above recalled.

European users affected by the pandemic crisis, while initially being able to rely on the use of available stocks, were later faced with a change in the price conditions that had previously been agreed by contract, and this precisely because of a shortage of raw materials combined with an unsustainable extension of delivery times.

Currently, ordering today, some European producers are fully booked for the whole 1st quarter 2022 and others are offering very limited quantity for Feb/March '22 delivery, while Indian and Indonesian producers deliver in Feb/March '22, already taking into account 45 to 60 days of shipping. As a result, the European time to market, for limited quantity offer, is over 7 months; the Indian and Indonesian time to market is 3-4 months , plus shipping.

The Eu producers are not able to meet demand and the market is suffering an hard shortage

Furthermore, unlike the claim made by the complainant and the Commission (see recital 107), according to EURANIMI, the Union industry does not have sufficient production capacity to accommodate almost 150 % of the Union consumption in the investigation period.

Nor is it true that there are sources of supply of SSCR from third countries (recital 108 of the GDD), such as Taiwan and Korea. These countries, in fact, are subject to safeguard measures and cannot increase exports vs. the European Union. South Africa is controlled by a European producer who manages volumes while keeping quotas low and therefore cannot be taken into consideration.

The reckless increase in prices in the Union, not related to raw materials, is clear evidence of the abuse of protection that European producers are benefiting from. The main raw material, scrap, has increased much less than the selling prices as already specified in the previous note (see Siderweb statistics – **Annex 6**). European producers are forming a cartel thanks to the too many commercial protections they are benefiting from: a brief investigation will quickly reveal the state of things. The trend in the financial results of European producers is clear evidence of the anomalous situation (see Annexes 3-4-5).

In light of the foregoing, it is currently not in the interest of the Union to impose definitive anti-dumping duties on stainless steel cold-rolled flat products (SSCR) originating in India and Indonesia.

For this reason, EURANIMI formally asks that the present investigation is discontinued/terminated with no imposition of duties.

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8. Request for suspension (Article 14.4 of the Basic Regulation)

As referred, the stainless stell market is facing a perfect storm of interrelated factors leading to unprecedented increases in raw material and processing costs, combined with logistical problems and product shortage. On the back of this, EU producers are reporting much improved financial results. Meanwhile downstream industries are unable to obtain supplies, even at increased prices.

All these factors are market driven; principally the post-Covid economic rebound from late 2020 and continuing in 2021. However, this also coincides exactly with the end of the IP in AD 670 (30 June 2020). Even allowing that the findings of DG Trade were sufficient to support definitive duties (which is contested), such is the scale of the changes in the market since June 2020, that any such findings are rendered meaningless.

At a time when demand for stainless steel products is outstripping demand, countries such as Russia and China are taking steps to shield their user industries as much as possible.

In this climate it makes no sense for the EU to impose import duties 14-35 % and 10-20 % on stainless steel cold-rolled products from India and Indonesia.

For this reason, the proposed duties should be suspended whilst a full analysis is made of the continuing market development and its impact on the findings set out in the General

Disclosure Document, according the art. 14 (4) of the Basic regulation, as already been taken in the AD 668 antidumping proceeding concerning imports of aluminium rolled products from China.

As a subordinate, therefore EURANIMI asks that the Commission taking into account the above mentioned exceptional circumstances duly investigate the post-IP period in order to reach a conclusion towards the suspension of the anti-dumping duties and/or investigation at issue, as per attached application with the relevant annexes (**Annex 7**).

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9. Reference to Euranimi in the Regulation

As a formally registered Brussels-based ivzw/aisbl (international non-profit association), EURANIMI kindly asks for reason of coherency and equality of arms that in the possible future Regulation imposing duties and/or better, in the procedure that the Commission may open for the suspension of duties it is referred to as "EURANIMI" rather than "an association of importers and distributors". This because other companies and often the complainant are specifically mentioned by name.

Yours truly,

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