

Commission Decision of 22 December 2005 amending Commission Decision 1999/572/EC accepting undertakings offered in connection with the anti-dumping proceedings concerning imports of steel wire ropes and cables originating, inter alia, in India (2006/38/EC)

COMMISSION DECISION

of 22 December 2005

amending Commission Decision 1999/572/EC accepting undertakings offered in connection with the anti-dumping proceedings concerning imports of steel wire ropes and cables originating, *inter alia*, in India

(2006/38/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 Articles 8 and 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

- (1) In August 1999, by Regulation (EC) No 1796/1999⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of steel ropes and cables (the product concerned) originating, *inter alia*, in India.
- (2) By Decision 1999/572/EC⁽³⁾, the Commission accepted a price undertaking from an Indian company, i.e. Usha Martin Industries & Usha Beltron Ltd. This company has changed its name in the meantime and is now known as Usha Martin Ltd (UML). The change of name in no way affected the activities of the company.
- (3) As a result, imports into the Community of the product concerned of Indian origin, produced by UML or by any other related company worldwide, and of a type covered by the undertaking (the product covered by the undertaking), were exempted from the definitive anti-dumping duties.
- (4) In this regard, it should be noted that certain types of steel wire rope currently produced by UML were not exported to the Community during the investigation period which led to the imposition of definitive anti-dumping measures and were not, therefore, within the scope of the exemption afforded by the undertaking. Accordingly, such steel wire ropes were liable to the

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payment of the anti-dumping duty when entered for free circulation in the Community.

- (5) In November 2005, following an expiry review pursuant to Article 11(2) of the basic Regulation, the Council, by Regulation (EC) No 121/2006⁽⁴⁾ decided that the anti-dumping measures applicable to imports of the product concerned originating, *inter alia*, in India should be maintained.

B. BREACHES OF THE UNDERTAKING

1. Obligations of companies with undertakings

- (6) The undertaking offered by UML obliges it (and any related company worldwide) to, *inter alia*, export the product covered by the undertaking to the first independent customer in the Community at or above certain minimum import price levels (MIPs) laid down in the undertaking. These price levels eliminate the injurious effects of dumping. In the case of resales in the Community to the first independent customer by related importers, the resale prices of the product covered by the undertaking, after appropriate adjustments for selling, general and administrative costs and a reasonable profit, must also be at levels which eliminate the injurious effects of dumping.
- (7) The terms of the undertaking also oblige UML to provide the Commission with regular and detailed information in the form of a quarterly report of its sales (and resales by its related parties in the Community) of the product concerned originating in India to the Community. Such reports are intended to include the products covered by the undertaking which benefit from the exemption to the anti-dumping duty as well as those types of steel wire ropes not covered by the undertaking and which are therefore liable to the anti-dumping duty.
- (8) Unless otherwise indicated, it is assumed by the Commission that the sales reports of UML (and the reports of resales of related companies established in the Community) are, as submitted, complete, exhaustive and correct in all particulars.
- (9) It was also acknowledged by UML that, with regard to the exemption to the anti-dumping duties afforded by the undertaking, such exemption is conditional upon presentation to Community customs services of an 'Undertaking Invoice'. Moreover, the company undertook not to issue such Undertaking Invoices for sales of those types of the product concerned not covered by the undertaking and which are therefore liable to the anti-dumping duty.
- (10) It is also a condition of the undertaking that the terms and provisions thereof apply to any related company to UML, worldwide.
- (11) For the purposes of ensuring compliance with the undertaking, UML also agreed to provide all information considered necessary by the Commission

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and to allow on-spot verification visits at its premises, and those of any related companies, in order to verify the accuracy and veracity of data submitted in the said quarterly reports.

- (12) In this regard, verification visits were carried out at the premises of UML in India and at those of a related company to UML in Dubai, i.e. Brunton Wolf Wire Ropes FZE (BWWR).
2. Results of the verification visit to UML
- (13) Examination of the company's accounting records showed that significant volumes of the product concerned not covered by the undertaking had not been included in the quarterly undertaking sales reports submitted to the Commission. Furthermore, the goods in question had been sold by UML to its related importers in the UK and Denmark and included on Undertaking Invoices.
 - (14) It is considered that the omission of the sales in question from the sales reports and their incorrect inclusion on Undertaking Invoices constitute breaches of the undertaking.
3. Results of the verification visit to BWWR
- (15) It should first be noted that finished steel wire rope produced by BWWR has previously gone through two main production stages, namely: (i) a given number of individual steel wires are first twisted into what is known as a 'stranded wire', and (ii) a given number of such stranded wires formed from individual steel wires are then twisted together to form the finished steel wire rope.
 - (16) The verification at the premises of BWWR established that significant quantities of stranded wire of Indian origin had been sold by UML to BWWR and that BWWR had transformed this stranded wire into steel wire rope, some of which was then sold to the Community and exported as having United Arab Emirates (UAE) origin.
 - (17) In view of this transformation process, it was considered necessary to examine the question of the origin of the steel wire rope sold to the Community by BWWR. Reference was therefore made to Article 22 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽⁵⁾ (the Community Customs Code), which provides that the non-preferential rules of origin apply to measures other than tariff measures established by Community provisions governing specific fields relating to trade in goods, such as anti-dumping measures.
 - (18) The provisions regarding determination of the non-preferential origin of products, the production of which involves more than one country, are set out in Articles 24 and 25 of the Community Customs Code and Articles 35 and 39 of Commission Regulation (EEC) No 2454/93⁽⁶⁾ laying down the provisions

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for the implementation of the Community Customs Code. As concerns the concept of the ‘last substantial transformation’ referred to in Article 24 of the Community Customs Code, in the case of steel wire ropes, it is considered that this product has undergone its last substantial processing or working when it is classified in a four-digit Harmonised System Tariff Heading (the four-digit Heading) distinct from the four-digit Headings where the materials used in the manufacturing of this product were classified.

- (19) In accordance with the above, the transformation of Indian stranded wire falling within the four-digit Heading 73.12 into steel wire rope also falling within four-digit Heading 73.12 does not confer UAE origin on the finished product, in this case steel wire rope, but instead it keeps Indian origin.
- (20) Accordingly, steel wire rope sold by BWWR and made from stranded wire of Indian origin is considered to be of Indian origin and should therefore be subject to the current anti-dumping measures applicable to imports originating in India. Consequently, these products are either subject to the terms of the undertaking or liable to anti-dumping duties when entered for free circulation in the Community if they do not fall under any product category covered by the undertaking.
- (21) Furthermore, it was found that the steel wire ropes in question, considered to be of Indian origin, sold by BWWR to the Community had not been reported in UML’s or its related companies’ quarterly undertaking sales reports to the Commission, nor had they been declared as being of Indian origin on importation for free circulation in the Community. It follows that, in the absence of an Undertaking Invoice, such imports of the product concerned into the Community from Dubai, considered to be of Indian origin, should have been liable to payment of anti-dumping duty when entered for free circulation in the Community.
- (22) Moreover, it was established that such steel wire ropes of Indian origin produced in Dubai had been sold on the Community market below the relevant MIPs established in UML’s undertaking for the steel wire ropes in question.
- (23) Accordingly, in view of all the above findings, UML was informed of the essential facts and considerations on the basis of which it was intended to withdraw the Commission’s acceptance of the undertaking and to impose a definitive anti-dumping duty in its place. A period was granted within which representations could be made both in writing and orally. In this regard, UML submitted comments both in writing and verbally.

4. Submissions

(a) Breaches of reporting obligations

- (24) With regard to the issue of the product concerned exported by UML and not reported in the quarterly undertaking sales reports, it was stated that although the goods in question figured on Undertaking Invoices, they were imported

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into the Community under an inward processing scheme and were either subsequently entered for free circulation in the Community upon payment of the anti-dumping duty, or re-exported outside the Community. It was submitted, therefore, that their omission from the undertaking sales reports was simply due to clerical error, that no harm had been caused, and that no material infringement had occurred.

- (25) In support of this argument, UML considered that the primary aim of an undertaking is to ensure that sales are made at levels which eliminate injury. In this respect, it submitted that, as it had fully complied with these conditions, the accuracy of the undertaking sales reports was of secondary importance. Similarly, as long as products not covered by the undertaking but appearing on Undertaking Invoices had ultimately had the anti-dumping duty paid or had been re-exported outside the Community, it was considered by UML that the substance at the heart of the undertaking had been respected. It was therefore the view of UML that no change in the *status quo* of the Community market had occurred due to its actions in this regard or those of its related companies in the Community.
- (26) In response to these arguments, the Commission would agree that the function of any undertaking is to remove the injurious effects of dumping. However, it does not consider the obligation to provide accurate reports of sales or the inclusion of goods not covered by the undertaking on the Undertaking Invoices to be of secondary or subordinate importance to any other provisions of an undertaking. Only by being in possession of the full details of sales of the product concerned to the Community can the Commission effectively monitor an undertaking and determine whether it is being respected and the injurious effects of dumping removed. If sales reports are incomplete or inaccurate, this casts doubt on the company's respect of the undertaking as a whole. Compliance with the reporting formalities must therefore be regarded as forming part of the primary obligations of the companies concerned, in so far as those formalities are not only intended to simplify administrative procedures, but are also necessary for the proper functioning of the undertaking system as a whole.
- (27) It follows from this that with regard to the question of whether the *status quo* on the Community market has been maintained (and, implicitly, whether harm has been done to the Community industry), it is considered that breaches of reporting obligations put the efficacy of the undertakings system into jeopardy, a system set up to specifically defend the Community producers of steel wire ropes from injurious dumping. The absence of complete and reliable reports also casts doubts on whether the substantive provisions of the undertaking have been complied with and therefore prevents the Commission from determining if all of the company's obligations have been met. Accordingly, the Commission must consider such violations as detrimental to the Community producers.

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- (28) In addition, under the undertaking, UML and its related companies, worldwide, have to respect all the different provisions of that undertaking and to take effective measures to ensure that the provisions thereof were complied with. In the present case, the internal checks and procedures necessary to enable UML to fully meet its obligations in accordance with the terms of the undertaking were not present.
- (29) Accordingly, the arguments presented by the company with regard to the reporting formalities do not alter the Commission's view that a breach of the undertaking has occurred.
- (b) Proportionality
- (30) It was also submitted that there should exist a reasonable relationship between action taken by the Community Institutions within the framework of the present system of price undertakings for the product concerned originating in India and the intended aims of the measures (i.e. proportionality).
- (31) As concerns the issue of proportionality, it should first be pointed out that in accordance with Article 8(7) of the basic Regulation, failure to comply with the obligation to provide relevant information (e.g. non-compliance with *any* of the reporting requirements) shall be construed as a breach of the undertaking. Furthermore, in accordance with Article 8(9) of the basic Regulation, a definitive duty shall be imposed in case of a breach of the undertaking. It is considered that these Articles underline the 'stand alone' importance of the reporting obligation. This is further emphasised by the clear and precise language of the undertaking itself, in which all the reporting obligations are set out.
- (32) This approach has also been confirmed by the jurisprudence of the Court of First Instance which has ruled that any breach of an undertaking is sufficient to justify the withdrawal of acceptance of an undertaking⁽⁷⁾.
- (33) Accordingly, the arguments presented by UML with regard to proportionality do not alter the Commission's view that a breach of the undertaking has occurred.
- (c) Developing country
- (34) UML also argued that as it is an exporting producer situated in India, a developing country as defined by the WTO, in accordance with Article 15 of the WTO Anti-Dumping Agreement, 'special regard' should be given to it and, because of this, the Commission should not withdraw acceptance of the undertaking as this was a 'first minor issue of non-compliance'.
- (35) With regard to the issue of whether UML being situated in a developing country is a ground for not withdrawing acceptance of its undertaking, it should be recalled that UML is the mother company of a multi-national group

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of companies and one of the largest producers of the product concerned in the world. In view of the apparent competence of the management and the structure of the UML group seen by the Commission during its verification visits, it cannot be accepted that complying with a reporting requirement would create any difficulties for the company. Moreover, if a company offers an undertaking, it has to ensure that it is subsequently able to comply with the obligations arising from the undertaking. The arguments of the company on this point are therefore rejected.

- (d) Non-preferential origin for import purposes
- (36) As concerns the question of the origin of the steel wire ropes exported to the Community from Dubai, made from stranded wire of Indian origin, it was submitted by UML that the goods in question did not keep Indian origin at the final processing stage (i.e. twisting and finishing of stranded wire into steel wire rope) but, instead, UAE origin was conferred on the goods by virtue of these final processes.
- (37) In this regard, it was argued by UML that the Commission was wrong to rely on a change in the four-digit Heading as being the only determinant factor for non-preferential origin. It was further submitted by UML that, according to Articles 24 and 25 of the Community Customs Code, a change in the four-digit Heading is only one factor taken into account and is not necessarily conclusive as local value addition to imported inputs is another vital issue. In this regard, it was submitted that the local value addition in Dubai was in excess of 25 %. Furthermore, UML also contended that determining origin of goods by reference to changes (or not) to the four-digit Heading was the Community's negotiating position in ongoing WTO rules of origin negotiations and was '... not adopted Community law'.
- (38) It was also stated by UML that it was not aware of the non-preferential rules of origin and that when the Dubai factory was set up in 2003 it was assumed by the group's management in Dubai and in India that steel wire ropes produced in Dubai from stranded wire of Indian origin would acquire UAE origin.
- (39) With regard to these arguments raised by UML on the origin of the products in question exported to the Community from Dubai, the Commission would first point out that if two or more countries are involved in the production of goods, for non-preferential origin the concept of 'last substantial transformation' indeed determines the origin of the goods. However, in general, the criterion of last substantial transformation is expressed in one of the following three ways, namely (i) by a rule requiring a change of tariff (sub)heading in the Harmonised System nomenclature, or (ii) by a list of manufacturing or processing operations that do or do not confer on the goods the origin of the country in which these operations were carried out, or (iii) by a value added rule.

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- (40) In this case, steel wire ropes are one of the products covered by the rule requiring a change in the tariff (sub) heading. Therefore, as the four-digit Heading for stranded wire and steel wire ropes are the same, the transformation process carried out in Dubai does not change the Indian origin for the determination of non-preferential origin.
- (41) Furthermore, although it was not necessary to address the question of ‘value addition to imported inputs’ in Dubai, for the sake of good administrative order, an examination was also made of figures provided to support the submission of UML that the local value addition in Dubai was substantial. This examination showed that the actual value added in Dubai was, in any event, lower than the 25 % threshold claimed by the company, when expressed as a percentage to the ex-works price of steel wire ropes.
- (42) As concerns the submission of UML that the change to the four-digit Heading approach is a negotiating position of the Commission with regard to WTO origin negotiations and not adopted law, it is noted that the four-digit Heading rule is a well-established practice in applying Article 24 of the Community Customs Code. As such, it is the rule applied by the Community Institutions and the competent customs authorities of the Member States in determining the non-preferential origin of a series of products, amongst which is the product in question.
- (43) With regard to the statement that the company was unaware of the non-preferential rules of origin, the Commission would first of all repeat that UML is the mother company of a large multi-national operation with related production sites, distributors and sales offices situated around the world. Given the movement of raw materials, finished and semi-finished goods between member companies in the group, it appears unlikely that the company was not aware of the non-preferential rules of origin or the origin of key products produced at one of its sites. Moreover, it should be pointed out, in any event, that companies are deemed to know the applicable Code and rules and cannot invoke ignorance as a justification for non-respect of the rules in force.
- (44) In view of the foregoing, the Commission considers that the goods in question, exported from Dubai, were of Indian origin and should therefore have been subject to the anti-dumping measures applicable to imports of steel wire ropes originating in India.
- (45) Accordingly, the arguments presented by the company with regard to the origin of the goods in question were not accepted and, therefore, did not alter the Commission's view that breaches of the undertaking have occurred.

C. AMENDMENT OF DECISION 1999/572/EC

- (46) In the light of the foregoing, it is considered that acceptance of the undertaking offered by Usha Martin Industries & Usha Beltron Ltd, now known as Usha Martin Ltd, should be withdrawn. Article 1 of Commission Decision

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1999/572/EC accepting an undertaking from Usha Martin Industries & Usha Beltron Ltd should be amended accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

Acceptance of the undertaking in relation to imports of steel ropes and cables offered by Usha Martin Industries & Usha Beltron Ltd is hereby withdrawn.

Article 2

The table in Article 1(1) of Decision 1999/572/EC is replaced by the following table:

Country	Manufacturer	TARIC additional code
South Africa	Haggie Lower Germiston Road Jupiter PO Box 40072 Cleveland South Africa	A023

Article 3

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

Done at Brussels, 22 December 2005.

For the Commission

Peter MANDELSON

Member of the Commission

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- (1) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
- (2) OJ L 217, 17.8.1999, p. 1. Regulation as amended by Regulation (EC) No 1674/2003 (OJ L 238, 25.9.2003, p. 1).
- (3) OJ L 217, 17.8.1999, p. 63. Decision as last amended by Regulation (EC) No 1678/2003 (OJ L 238, 25.9.2003, p. 13).
- (4) See page 1 of this Official Journal.
- (5) OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council (OJ L 117, 4.5.2005, p. 13).
- (6) OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 883/2005 (OJ L 148, 11.6.2005, p. 5).
- (7) Case T-51/96 *Miwon Co. Ltd v Council* [2000] ECR II-1841, paragraph 52.

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