Council Regulation (EC) No 1858/2005 of 8 November 2005 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating in the People's Republic of China, India, South Africa and Ukraine following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

COUNCIL REGULATION (EC) No 1858/2005

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the 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(2) thereof,

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

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) In August 1999, by Regulation (EC) No 1796/1999[(2)] (the original Regulation), the Council imposed a definitive anti-dumping duty on imports of steel ropes and cables (SWR) originating in the People's Republic of China (PRC), Hungary, India, Mexico, Poland, South Africa and Ukraine. The investigation that led to these measures is hereinafter referred to as 'the original investigation'.

(2) The measures applying to these imports consisted of an *ad valorem* duty, except for imports from one Indian, one Mexican, one South African and one Ukrainian exporting producers from which undertakings were accepted by Commission Decision 1999/572/EC[(3)]. By Regulation (EC) No 1678/2003, the Commission withdrew the undertaking offered by the above Ukrainian exporting producer, and by Regulation (EC) No 1674/2003, the Council reimposed the corresponding *ad valorem* anti-dumping duty for this exporter.

(3) Thereafter, it was found that circumvention of the original measures concerning imports from Ukraine and the PRC took place via respectively Moldova and via Morocco following investigations pursuant to Article 13 of the basic Regulation. Consequently, by Regulation (EC) No 760/2004[(4)], the Council extended the definitive anti-dumping duty imposed on imports originating in the Ukraine to imports of the same steel ropes and cables consigned from Moldova. Similarly, the anti-dumping duty

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imposed on imports originating in the PRC was extended, by Council Regulation (EC) No 1886/2004[5], to imports of the same steel ropes and cables consigned from Morocco, with the exception of those produced by a genuine Moroccan producer.

1.2. Investigation concerning another country

(4) On 20 November 2004, by a notice published in the *Official Journal of the European Union*[6], the Commission initiated an anti-dumping proceeding concerning imports of the same product originating in the Republic of Korea, further to a complaint lodged by the Community industry showing *prima facie* evidence that such imports are being dumped and are thereby causing material injury to the Community industry. The investigation was terminated by Commission Decision 2005/739/EC[7] without imposing measures.

1.3. Request for a review

(5) Following the publication of a notice of impending expiry of the anti-dumping measures in force of SWR originating in the PRC, Hungary, India, Mexico, Poland, South Africa and Ukraine[8], the Commission received, on 17 May 2004, a request to review these measures pursuant to Article 11(2) of the basic Regulation.

(6) The request was lodged by the Liaison Committee of European Union Wire Rope Industries (EWRIS) (the applicant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of SWR. The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

(7) In the absence of such evidence concerning imports originating in Mexico, the applicant did not request the initiation of an expiry review concerning imports originating in Mexico. Consequently, the measures applicable to imports originating in Mexico expired on 18 August 2004[9].

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review pursuant to Article 11(2) of the basic Regulation, the Commission initiated a review[10].

1.4. Investigation

(9) The Commission officially advised the exporting producers, importers, users known to be concerned and their associations, the representatives of the exporting countries and the Community producers of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the notice of initiation.

(10) In view of the large number of Community producers and of importers in the Community not related to an exporting producer in one of the countries concerned, it was considered appropriate, in conformity with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would indeed be necessary and, if so, to select a sample, the

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above parties were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within two weeks of the initiation of the proceeding and to provide the Commission with the information requested in the notice of initiation.

(11) Seventeen Community producers properly completed the sampling form within the deadline and formally agreed to cooperate further in the investigation. The sampling form requested, *inter alia*, information concerning the development of certain 'macro' injury indicators, namely production capacity, production volume, stocks, sales volumes and employment.

(12) From the above 17 producers, 5 companies, which were found to be representative of the Community industry in terms of volume of production and sales of the product concerned in the Community, were selected for the sample.

(13) Only one importer provided the information requested in the notice of initiation and expressed its willingness to further cooperate with the Commission services. In view of this situation, the Commission services decided not to apply sampling in the case of the unrelated importers, but to send a questionnaire to the aforementioned importer. Subsequently, the said importer failed to complete the questionnaire. It is therefore considered that no cooperation could be obtained from the unrelated importers. The Association representing the interests of the importers (EWRIA) made comments of a general nature, notably on the definition of the product concerned and the like product. These comments are addressed under recitals (19) and (20).

(14) Questionnaires were therefore sent to the five sampled Community producers and to all known exporting producers. In addition, one producer in Turkey (analogue country) was contacted and received a questionnaire.

(15) Replies to the questionnaires were received from the five sampled Community producers and three exporting producers in the countries concerned, as well as from two related importers and one producer in the analogue country.

(16) Verification visits were carried out at the premises of the following companies:

Sampled Community producers:

— BTS Drahtseile GmbH (Germany),

— Cables y Alambres especiales, SA (Spain),

— CASAR Drahtseilwerk Saar GmbH (Germany),

— Manuel Rodrigues de Oliveira Sa & Filhos, SA (Portugal),

— Trefileurope (France).

Producer in the exporting country:

— Usha Martin Ltd (India).

Related importers in the Community:

— Usha Martin UK (United Kingdom),

— Usha Martin Scandinavia (Denmark).

Producer in the analogue country:

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— Celik Halat (Turkey).

(17) The investigation regarding the continuation and/or recurrence of dumping and injury covered the period from 1 July 2003 to 30 June 2004 (investigation period or IP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2001 up to the end of the IP (period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(18) The product concerned is the same as that in the original investigation which led to the imposition of measures currently in force, i.e. steel ropes and cables, including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm. They are currently classifiable within CN codes ex 7312 10 82, ex 7312 10 84, ex 7312 10 86, ex 7312 10 88 and ex 7312 10 99.

2.2. Like product

(19) As established in the original investigation, this review investigation confirmed that the product concerned and the products manufactured and sold by the exporting producers on the domestic market, as well as those manufactured and sold by the Community producers on the Community market and by the producer in the analogue country on the domestic market of the analogue country have the same basic physical characteristics and end uses and are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

(20) EWRIA reiterated the argument made in the original investigation that the product concerned differs substantially from the products manufactured and sold in the Community, and should not be compared. The argument has been addressed in depth in the original Regulations imposing provisional and definitive measures on imports of the product concerned and it was found that the Community-produced and imported SWR were alike. As EWRIA did not bring any new element showing that the basis on which these original findings were made had changed, the conclusions reached in the original definitive Regulation are confirmed.

3. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

(21) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and, if so, whether or not the expiry of the measures would be likely to lead to a continuation of dumping.

3.1. Preliminary remarks

(22) During the IP, the total import volume, as recorded in Eurostat, of steel wire ropes from the PRC, India, South Africa and Ukraine (the countries concerned) amounted to 7 784 tonnes, representing 4,4 % of the Community market share.

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(23) The investigation period of the original investigation covered 15 months (1 January 1997 to 31 March 1998) and only covered imports into the Community prior to Enlargement. Therefore, import figures from the original investigation period and the IP are not directly comparable. In any case, total imports in EU-15 of the countries concerned in the original investigation period amounted to 21 102 tonnes, representing 14,3 % of the Community market share.

(24) In India one exporting producer cooperated, covering 75 % of the export volumes recorded in Eurostat. In South Africa, the sole known exporting producer submitted information on its export sales to the Community during the IP, which represented all export sales of South Africa to the Community during the same period. As regards the PRC, one exporting producer cooperated which represented 75 % of export sales of the product concerned from the PRC to the Community. Finally, as regards Ukraine, none of the two known exporting producers cooperated in the present investigation.

3.2. Dumping of imports during the investigation period

(25) In accordance with Article 11(9) of the basic Regulation, the same methodology was used as in the original investigation, whenever circumstances have not changed.

3.2.1. India

(26) During the IP, the total import volume, as recorded in Eurostat, of SWR from India amounted to 3 869 tonnes, representing 2,2 % of the Community market share.

3.2.1.1. Normal value

(27) As far as the determination of normal value is concerned, it was first established for the cooperating Indian exporting producer whether its total domestic sales of the like product were representative, i.e. whether the total volume of such sales represented at least 5 % of its total export sales volume to the Community. In accordance with Article 2(2) of the basic Regulation, this was found to be the case.

(28) Further to the disclosure, the cooperating Indian exporting producer objected to the method used by the Commission. He argued that for the representativity test the sales volume of the product concerned to the first independent customer in the Community and not to the related importer in the Community should have been used. However, Article 2(2) of the basic Regulation provides that for the determination whether domestic sales of the like product were representative, the domestic sales volume should be compared to the sales volume of the product concerned exported to the Community, without specifying whether export sales to the first independent customer or export sales to the related importer should be taken into consideration. Consequently, it was found that the method used by the Commission was reasonable and in line with the basic Regulation. Therefore this claim had to be rejected.