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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 760/2004

of 22 April 2004

extending the definitive anti-dumping duty imposed by Regulation (EC) No 1796/1999 on imports of steel ropes and cables originating, *inter alia*, in Ukraine to imports of steel ropes and cables consigned from Moldova, whether declared as originating in Moldova or not

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 13 thereof,

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

Whereas:

A. PROCEDURE

1. Existing measures

(1) By Regulation (EC) No 1796/1999 [2] (the original Regulation), the Council imposed an anti-dumping duty of 51,8 % on imports of steel ropes and cables originating, *inter alia*, in Ukraine. By Decision 1999/572/EC [3], the Commission accepted an undertaking from the exporting producer Joint Stock Company Silur, Ukraine. By Regulation (EC) No 1678/2003, the undertaking which had previously been accepted from Joint Stock Company Silur was withdrawn.

2. Request

(2) On 16 June 2003, the Commission received a request pursuant to Article 13(3) of the basic Regulation (the request) from the Liaison Committee of the European Federation of Steel Wire Rope Industries (EWRIS) (the applicant) to investigate the alleged circumvention of the anti-dumping measures imposed on imports of steel ropes and cables originating in Ukraine. The request was submitted on behalf of a major proportion of the Community production of steel ropes and cables.

(3) The applicant alleged and submitted sufficient evidence showing that, following the imposition of measures on imports of steel ropes and cables originating, *inter alia*, in Ukraine, there had been a significant change in the pattern of trade involving exports of steel ropes and cables from Ukraine and Moldova to the Community. This change in the pattern of trade was alleged to stem from the transhipment via Moldova of steel ropes and cables originating in Ukraine. It was alleged that there was insufficient due cause or economic justification for the aforementioned changes other than the imposition of the duty on imports of steel ropes and cables from Ukraine.

(4) Finally, the applicant alleged and submitted evidence that the remedial effects of this duty were being undermined both in terms of quantities and prices. It was claimed that significant volumes of imports of steels ropes and cables from Moldova have replaced imports of steel ropes and cables originating in Ukraine. In addition, the applicant submitted evidence that the prices of steel ropes and cables imported from Moldova were dumped in relation to the normal values previously established for the steel ropes and cables originating in Ukraine.

3. Initiation

(5) By Regulation (EC) No 1347/2003 [4] (the initiating Regulation), the Commission initiated an investigation into the alleged circumvention of steel ropes and cables originating in Ukraine by imports of steel ropes and cables consigned from Moldova, whether declared as originating in Moldova or not and, pursuant to Articles 13(3) and 14(5) of the basic Regulation, directed the customs authorities to register imports of steel ropes and cables consigned from Moldova, whether declared as originating in Moldova or not, as of 31 July 2003. The Commission advised the authorities of Ukraine and Moldova of the initiation of the investigation.

[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 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 amended by Regulation (EC) No 1678/2003 (OJ L 238, 25.9.2003, p. 13).
[4] OJ L 190, 30.7.2003, p. 3.

4. **Investigation**

(6) Questionnaires were sent to the parties located in Ukraine and Moldova that were either named in the request or subsequently became known to the Commission. Questionnaires were sent to importers in the Community that were named in the request or cooperated in the original investigation that led to the existing measures. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being made on the basis of the facts available.

(7) No complete reply to the questionnaires was received from exporters/producers in Ukraine. The two known exporting producers in Ukraine informed the Commission that they had only exported an insignificant quantity of the product concerned to Moldova during the investigation period, and that these exports were exclusively destined for internal consumption in Moldova. No replies to the questionnaires were received from exporters/producers in Moldova.

(8) In the course of the investigation, statistical data concerning imports and exports of the product concerned were obtained from the Ukrainian and Moldovan authorities.

(9) A number of Community importers replied by declaring that they had not imported any steel ropes and cables from Moldova during the investigation period. One importer reported that it had two deliveries of the product concerned amounting to 196 tonnes declared as of Moldovan origin during the investigation period.

5. **Investigation Period**

(10) The investigation period covered the period from 1 July 2002 to 30 June 2003 (the IP). Data were collected from 1999 up to the end of the IP to investigate the alleged change in the pattern of trade.

B. **RESULTS OF THE INVESTIGATION**

1. **Degree of cooperation**

(11) As mentioned in recital 7, no producers/exporters of steel ropes and cables in Moldova made themselves known, or cooperated in the investigation. Accordingly, findings in respect of the exports of steel ropes and cables consigned from Moldova to the Community had to be made on the basis of the facts available in accordance with Article 18 of the basic Regulation. At the outset of the investigation, all companies known were informed that non-cooperation might lead to the application of the said Article, as explained in recital 6.

2. **Additional information**

(12) Without prejudice to the present investigation and by way of background it is mentioned here that an investigation on alleged fraud involving steel ropes and cables declared as originating in Moldova but likely to be originating in Ukraine was initiated by the European Anti-Fraud Office (OLAF) in 2002 and is still ongoing. Other OLAF investigations are also ongoing, concerning similar allegations relating to the same product likely to be originating in Ukraine but declared as originating in another third country. Moreover, the customs authorities of one Member State considered that a quantity of 196 tons imported into the Community during the IP and declared as of Moldovan origin was not of that origin but of Ukrainian origin.

3. **Product concerned and like product**

(13) The product under consideration is, as defined in the original investigation, steel ropes and cables, including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm, currently classifiable within CN codes ex 7312 10 82, ex 7312 10 84, ex 7312 10 86, ex 7312 10 88, ex 7312 10 99.

(14) In the absence of cooperation by any Moldovan company and given the statements provided in the request, it is considered that steel ropes and cables exported to the Community from Ukraine and those consigned from Moldova to the Community have the same basic characteristics and the same uses. Therefore, they are considered as like products within the meaning of Article 1(4) of the basic Regulation.

4. **Change in the pattern of trade between third countries and the Community**

(15) Due to the non-cooperation of any Moldovan company, the volume and value of Moldovan exports of the product concerned to the Community were determined on the basis of the information available, which in this case was Eurostat data at CN level.

(16) Following the imposition of the anti-dumping duty of 51,8 %, imports of the product concerned originating in Ukraine into the Community decreased substantially from 1 234 tonnes in 1999 to 386 tonnes in 2000, 320 tonnes for the year 2001 and 209 tonnes in 2002. During the IP, the reported imports amounted to 437 tonnes. At the same time, imports into the Community of steel ropes and cables from Moldova have increased from a situation of zero imports until 1999 to 36 tonnes in 2000, and suddenly increased to 1 054 tonnes in 2001 and 1 815 tonnes in 2002. During the IP, the reported imports amounted to 196 tonnes still confirming the change in the pattern of trade that commenced from the year 2000, since beforehand there were no imports from Moldova into the Community. Accordingly, a marked change in the pattern of trade is established in the case of both exporting countries which coincided with the entry into force, in August 1999, of the anti-dumping measures on steel ropes and cables originating in Ukraine.

5. **Insufficient due cause or economic justification**

(17) According to the available information, there appears to be no Moldovan production of steel ropes and cables. There were no imports of the product concerned into Moldova from Ukraine before 2000 according to the national Ukrainian statistical data. The imports commenced in 2000 after the imposition of measures in August 1999, coinciding with the change of pattern of trade as shown in recital 16. Statistical data supplied provided by the Moldovan authorities show that, except for some negligible quantities, no other countries have exported the product concerned to Moldova.

(18) There is a coincidence in time between the imposition of the anti-dumping measures on imports of the product concerned from Ukraine and the parallel surge of exports from Moldova. In the absence of cooperation by any Moldovan company, it is concluded, on the basis of the available information, that the change in the pattern of trade stemmed from the imposition of the anti-dumping duty rather than any other sufficient due cause or economic justification within the meaning of the second sentence of Article 13(1) of the basic Regulation.

6. **Undermining of the remedial effects of the duty in terms of the prices and/or the quantities of the like product**

(19) It is evident from the figures in recital 16 that a clear quantitative change in the pattern of Community imports of the product concerned occurred since the imposition of measures in 1999. Following the imposition of the antidumping duty, Ukrainian imports into the Community decreased significantly and there was a parallel surge of exports of the product concerned to the Community from Moldova. According to the Eurostat data, since 1999 until the end of IP, the total amount of the Moldovan exports to the Community was 2 870 tonnes that replaced corresponding quantities previously exported from Ukraine. It is therefore clear that the marked change in trade flows undermined the remedial effects of the measures in terms of the quantities imported into the Community market.

(20) With regard to prices of the products concerned consigned from Moldova, in the absence of cooperation, it was necessary to refer to Eurostat data, which was the best evidence available. It was found that the average export price of the Moldovan exports to the Community were below the injury elimination level of Community prices as established in the original investigation. Hence, the remedial effects of the duty imposed in terms of prices are undermined.

(21) It is therefore concluded that the imports of the product concerned from Moldova undermine the remedial effects of the duty both in terms of quantities and prices.

7. **Evidence of dumping in relation to the normal values previously established for like or similar products**

(22) As explained in recital 20, given the absence of cooperation, in order to determine whether evidence of dumping could be found with respect to the exports of the product concerned to the Community from Moldova during the IP, Eurostat data at CN level were used pursuant to Article 18 of the basic Regulation as the basis for establishing export prices to the Community.

(23) In accordance with Article 13(1) of the basic Regulation, the normal value to be used in anti-circumvention investigations is the normal value established during the original investigation. In the original investigation, Poland was considered to be the appropriate market economy analogue country for Ukraine and normal value was established on the basis of prices as well as constructed normal value in that analogue country.

(24) In the absence of cooperation and pursuant to Article 18 of the basic Regulation, for the purpose of comparing the export price and normal value, it was considered appropriate to assume that the product mix of the goods observed during this investigation was the same as in the original investigation.

(25) For the purpose of a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences in factors affecting price and price comparability. These adjustments were made in accordance with Article 2(10) of the basic Regulation in respect of transport, insurance and handling. As far as the exports consigned from Moldova to the Community were concerned, in the absence of other information relating to these factors, the information contained in the request was used.

(26) In accordance with Article 2(11) and 2(12) of the basic Regulation, the weighted average normal value as established during the original investigation was compared to the average export price for the IP established as indicated in recital 22. In the absence of any information to the contrary, it was assumed that the product mix had not changed between the original investigation and the IP. This comparison showed the existence of dumping. The dumping margin found, expressed as a percentage of the cif price at the Community frontier duty unpaid, was between 10 % and 15 %.

C. **MEASURES**

(27) In view of the findings above, it is found that circumvention has taken place within the meaning of Article 13(1), second sentence, of the basic Regulation. In accordance with Article 13(1) first sentence of the basic Regulation, the existing anti-dumping measures on imports of the product concerned originating in Ukraine should be extended to imports of the same product consigned from Moldova, whether declared as originating in Moldova or not.

(28) In accordance with Article 14(5) of the basic Regulation, which provides that measures shall be applied against registered imports from the date of registration, the anti-dumping duty should be collected on imports of steel ropes and cables consigned from Moldova which entered the Community under registration imposed by the initiating Regulation.

(29) The circumvention takes place outside the Community. Article 13 of the basic Regulation aims to counter circumvention practices without affecting operators which can prove that they are not involved in such practices, but it does not contain a specific provision providing for the treatment of producers which could establish that they are not involved in circumvention practices. Therefore, it appears necessary to introduce a possibility for producers which have not sold the product concerned for export during the IP and are not related to any exporters or producers subject to the extended antidumping duty to request an exemption from the measures on these imports. The producers concerned which would consider lodging a request for an exemption from the extended anti-dumping duty would be required to complete a questionnaire in order to enable the Commission to determine whether an exemption may be warranted. Such exemption may be granted after the assessment of the market situation of the product concerned, production capacity and capacity utilisation, procurement and sales and the likelihood of continuation of practices for which there is insufficient due cause or economic justification and the evidence of dumping. The Commission would normally also carry out an on-spot verification visit. The request would have to be addressed to the Commission forthwith, with all relevant information, in particular any modification in the company's activities linked to production and sales. Importers could still benefit from exemption from registration or measures to the extent that their imports are from exporters, which are granted such an exemption, and in accordance with Article 13(4).

(30) Where an exemption is warranted, the Commission will, after consultation of the Advisory Committee, propose the amendment of this Regulation accordingly. Subsequently, any exemptions granted will be monitored to ensure compliance with the conditions set therein.

D. **PROCEDURE**

(31) Interested parties were informed of the essential facts and considerations on the basis of which the Council intended to extend the definitive anti-dumping duty in force and were given the opportunity to comment and to be heard. No comments which were of a nature to change the abovementioned conclusions were received,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Regulation (EC) No 1796/1999 on imports of steel ropes and cables originating in Ukraine, falling within the CN codes ex 7312 10 82, ex 7312 10 84, ex 7312 10 86, ex 7312 10 88 and ex 7312 10 99, is hereby extended to imports of the same steel ropes and cables consigned from Moldova (whether declared as originating in Moldova or not) (TARIC codes 7312 10 82 11, 7312 10 84 11, 7312 10 86 11, 7312 10 88 11 and 7312 10 99 11).

2. The duty extended by paragraph 1 shall be collected on imports registered in accordance with Article 2 of Regulation (EC) No 1347/2003 and Articles 13(3) and 14(5) of Regulation (EC) No 384/96.

3. The provisions in force concerning customs duties shall apply.

Article 2

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the Community and must be signed by a person authorised to represent the applicant. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate B
Office: J-79 05/17
B-1049 Brussels
Fax (32 2) 295 65 05
Telex COMEU B 21877.

2. The Commission, after consulting the Advisory Committee, may authorise by a decision, the exemption of imports which are shown not to circumvent the anti-dumping duty imposed by Regulation (EC) No 1796/1999 from the duty extended by Article 1 of this Regulation.

Article 3

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EC) No 1347/2003.

Article 4

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, 22 April 2004.

For the Council
The President
B. COWEN