

COMMISSION DECISION

of 19 November 2004

accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of silicon carbide originating, *inter alia*, in Ukraine

(2004/782/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, 21 and 22 (c) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) By Regulation (EC) No 1100/2000⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of silicon carbide originating, *inter alia*, in Ukraine ('the existing measures').
- (2) In March 2004, the Commission announced through the publication of a notice in the *Official Journal of the European Union*⁽³⁾ the initiation of a partial interim review of the existing measures on imports of the product concerned originating, *inter alia*, in Ukraine to examine whether they should be amended to take account of certain consequences of the enlargement of the European Union to 25 Member States ('enlargement').

- (3) The Council concluded that it was in the interest of the Community to provide for the temporary adaptation of

the existing measures so as to avoid a sudden and excessively negative impact on importers and users in the 10 new Member States acceding to the European Union ('the EU-10') immediately following enlargement. It was considered that the best means of achieving this was through the acceptance of an undertaking offered by the co-operating party with an element for a quantitative ceiling.

- (4) Accordingly, by Decision 2004/498/EC⁽⁴⁾, the Commission accepted as a special measure a short-term undertaking from an exporting producer in Ukraine (Open Joint Stock Company Zaporozhsky Abrasivny Combinat).
- (5) In order to provide for an exemption from the anti-dumping duties afforded by the acceptance of the undertaking, Regulation (EC) No 1100/2000 was amended by Regulation (EC) No 991/2004.
- (6) It was stipulated in Decision 2004/498/EC that the acceptance of the undertaking would be limited to an initial period of six months ('the original period') without prejudice to the normal duration of the existing measures and that it would lapse after this period unless the Commission considered it appropriate to extend its period of application.
- (7) Accordingly, the Commission has examined whether the exceptional and negative conditions for interested parties in the EU-10 which led to acceptance of the undertaking still exist. As part of the overall appraisal, an evaluation of the compliance of the company concerned with its undertaking was also made.

B. APPRAISAL

1. Content of the current undertaking

- (8) The existing undertaking offered by the company concerned obliges it, *inter alia*, to export in accordance with its traditional pattern of trade to customers in the EU-10 within the framework of a quantitative ceiling established on the basis of previous, traditional export flows to the EU-10.

⁽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 125, 26.5.2000, p. 3. Regulation as last amended by Regulation (EC) No 991/2004 (OJ L 182, 19.5.2004, p. 18).

⁽³⁾ OJ C 70, 20.3.2004, p. 15.

⁽⁴⁾ OJ L 183, 20.5.2004, p. 88.

- (9) The terms of the undertaking also oblige the signatory company to provide the Commission with regular and detailed information in the form of a monthly report of its sales to the EU-10 (or re-sales by any related parties in the Community) and to accept verification visits by the Commission. In order, also, to be able to fully monitor the effectiveness of the undertakings, written agreement was received from the exporter's traditional customers in the EU-10 that they too would allow on-spot verification visits at their premises.

2. Compliance with the current undertaking

- (10) Verification visits to the exporting producer and certain of its traditional customers in the EU-10 confirmed that the company concerned had not exceeded the level of the quantitative ceiling stipulated in the undertaking. In addition, it was found that the company was broadly respecting its traditional pattern of trade with individual customers in the EU-10. Moreover, according to the information available, there have been no apparent 'spill-overs' from the EU-10 into the EU-15 of imports of the product concerned which had benefited from the exemption to the anti-dumping duties afforded by the undertaking.
- (11) In conformity with Regulation (EC) No 991/2004, the undertaking obliges the exporting producer to respect the import ceilings and in order that the undertakings can be monitored, the exporting producer concerned has also agreed to broadly respect its traditional selling patterns to individual customers in the EU-10. The exporting producer is also aware that if it is found that these sales patterns change significantly, or that the undertaking become in any way difficult or impossible to monitor, the Commission is entitled to withdraw acceptance of the company's undertaking resulting in definitive anti-dumping duties being imposed in its place, or it may adjust the level of the ceiling, or it may take other remedial action.

3. Analysis of conditions for continued acceptance of undertakings

- (11) Analysis of the monthly reports submitted to the Commission by the company concerned backed up by available official statistical data showed that a marked difference still existed between the prices for the product concerned in the EU-10 and the EU-15. In addition, it was noted that import volumes from Ukraine into the EU-10 had declined since enlargement, however, as indicated in recital (30) of Regulation (EC) No 991/2004, abnormal increases were found in import volumes prior to enlargement in 2003 and the first months of 2004. It is considered that this might have also contributed to the decrease in quantities imported into the EU-10 following enlargement.

C. CONCLUSION

1. Acceptance of an undertaking

- (12) Given that the exceptional and negative conditions which prevailed prior to enlargement and which necessitated the undertaking still exist, and that the terms of the undertaking have been observed during the initial period of its application by the company concerned, it is considered that the acceptance of an undertaking offered by the company concerned for a further period is justified.
- (13) As concerns the length of this further period, it is considered that a period of application of more than six months would negate the notion of the undertaking being of a transitional nature, therefore, acceptance will only be from 21 November 2004 to 20 May 2005 ('the final period').
- (14) With regard to the level of the quantitative ceiling to be applied for the final period, this has been calculated following the same methodology as was used to establish the quantitative ceiling for the original period.
- (15) It is also a condition of the undertaking that if it is breached in any way, the Commission will be entitled to withdraw acceptance thereof resulting in definitive anti-dumping duties being imposed in its place.
- (16) The company will also provide the Commission with regular and detailed information concerning its exports to the Community, meaning that the undertaking can be monitored effectively by the Commission.
- (17) In order that the Commission can monitor effectively the company's compliance with the undertakings, when the request for release for free circulation pursuant to the undertaking is presented to the relevant customs authority, exemption from the duty will be conditional upon the presentation of an invoice containing at least the items of information listed in the Annex to Council Regulation (EC) No 991/2004. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that the shipment corresponds to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate anti-dumping duty will instead be payable.

2. Disclosure to interested parties

- (19) All interested parties which had previously made themselves known were advised of the intention to accept an undertaking. The Community Industry raised certain concerns that a possible 'spill-over' of Ukrainian silicon carbide into the EU-15 had occurred, however, during a verification visit by the Commission, it was established that the silicon carbide in question was not of Ukrainian origin. The Community Industry nevertheless expressed the view that an undertaking should not be accepted.
- (20) Whilst the position of the Community Industry regarding the acceptance of an undertaking is noted, the circumstances and needs of importers and users in the EU-10 must also be taken into account. On balance, in view of the importance of continued supply for customers in the EU-10, it is considered that this outweighs the concerns of the Community Industry.
- (21) No other comments or submissions were made which caused the Commission to alter its views on the matter,

HAS DECIDED AS FOLLOWS:

Article 1

The undertaking offered by the exporting producer mentioned below, in connection with the anti-dumping proceeding concerning imports of silicon carbide originating in Ukraine is hereby accepted:

Country	Company	Taric Additional Code
Ukraine	Produced and exported by Open Joint Stock Company 'Zaporozhsky Abrasivny Combinat', Zaporozhye, Ukraine, to the first independent customer in the Community acting as an importer	A523

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union* and remain in force until 20 May 2005.

Done at Brussels, 19 November 2004.

For the Commission

Pascal LAMY

Member of the Commission