



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

22 November 2012*

(Appeal — Dumping — Regulation (EC) No 121/2006 — Imports of steel ropes and cables originating, inter alia, in India — Decision 2006/38/EC — Regulation (EC) No 384/96 — Article 8(9) — Undertakings offered in connection with anti-dumping proceedings)

In Case C-552/10 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 19 November 2010,

Usha Martin Ltd, established in Kolkata (India), represented by V. Akritidis and E. Petritsi, dikigoroï, and by F. Crespo, avocat,

appellant,

the other parties to the proceedings being:

Council of the European Union, represented by B. Driessen, acting as Agent, G. Berrisch, Rechtsanwalt, and N. Chesaites, Barrister,

European Commission, represented by T. Scharf and S. Thomas, acting as Agents, with an address for service in Luxembourg,

defendants at first instance,

THE COURT (Third Chamber),

composed of R. Silva de Lapuerta, acting as President of the Third Chamber, K. Lenaerts, G. Arestis (Rapporteur), J. Malenovský and T. von Danwitz, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 3 May 2012,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: English.

Judgment

- 1 By its appeal, Usha Martin Ltd asks the Court of Justice to set aside the judgment of the General Court of the European Union in Case T-119/06 *Usha Martin v Council and Commission* [2010] ECR II-4335 ('the judgment under appeal'), by which that court dismissed its action for annulment of Commission Decision 2006/38/EC of 22 December 2005 amending 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 (OJ 2006 L 22, p. 54) ('the contested decision'), and Council Regulation (EC) No 121/2006 of 23 January 2006 amending Regulation (EC) No 1858/2005 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, inter alia, in India (OJ 2006 L 22, p. 1) ('the contested regulation').

Legal context

- 2 The provisions governing the application of anti-dumping measures by the European Union ('EU') are set out in Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1), as amended by Council Regulation (EC) No 461/2004 of 8 March 2004 (OJ 2004 L 77, p. 12) ('the basic regulation').
- 3 Article 8 of the basic regulation, entitled 'Undertakings', provides in paragraphs 1, 7 and 9 thereof as follows:

'1. Upon condition that a provisional affirmative determination of dumping and injury has been made, the Commission may accept satisfactory voluntary undertaking offers submitted by any exporter to revise its prices or to cease exports at dumped prices, if, after specific consultation of the Advisory Committee, it is satisfied that the injurious effect of the dumping is thereby eliminated. In such a case and as long as such undertakings are in force, the provisional duties imposed by the Commission in accordance with Article 7(1) or the definitive duties imposed by the Council in accordance with Article 9(4) as the case may be shall not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings, as subsequently amended. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping and they should be less than the margin of dumping if such increases would be adequate to remove the injury to the Community industry.

...

7. The Commission shall require any exporter from which an undertaking has been accepted to provide, periodically, information relevant to the fulfilment of such undertaking, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a breach of the undertaking.

...

9. In case of breach or withdrawal of undertakings by any party to the undertaking, or in case of withdrawal of acceptance of the undertaking by the Commission, the acceptance of the undertaking shall, after consultation, be withdrawn by Commission Decision or Commission Regulation, as appropriate, and the provisional duty which has been imposed by the Commission in accordance with Article 7 or the definitive duty which has been imposed by the Council in accordance with Article 9(4) shall automatically apply, provided that the exporter concerned has, except where he himself has withdrawn the undertaking, been given an opportunity to comment.

Any interested party or Member State may submit information showing prima facie evidence of a breach of an undertaking. The subsequent assessment of whether or not a breach of an undertaking has occurred shall normally be concluded within six months, but in no case later than nine months following a duly substantiated request. The Commission may request the assistance of the competent authorities of the Member States in the monitoring of undertakings.’

Background to the dispute

4 The background to the dispute is set out at paragraphs 2 to 19 of the judgment under appeal as follows:

‘2 The applicant, Usha Martin Ltd, is a company governed by Indian law which manufactures steel wire ropes and exports them, inter alia, to the European Union. The applicant and the Wolf company established a joint undertaking, Brunton Wolf Wire & Ropes, established in Dubai (United Arab Emirates). Brunton Wolf Wire & Ropes also manufactures steel wire ropes and cables which it exports to the European Union.

3 On 12 August 1999, the Council of the European Union adopted Regulation (EC) No 1796/1999 imposing a definitive anti-dumping duty, and collecting definitively the provisional duty imposed, on imports of steel ropes and cables originating in the People’s Republic of China, Hungary, India, Mexico, Poland, South Africa and Ukraine and terminating the anti-dumping proceeding in respect of imports originating in the Republic of Korea (OJ 1999 L 217, p. 1).

...

5 The individual rate of the anti-dumping duty imposed on the applicant in recital 86 of Regulation No 1796/1999 and in Article 1(2) thereof was 23.8%. Under Article 2 of Regulation No 1796/1999, steel ropes and cables exported by the companies from which price undertakings had been accepted by the European Commission, including the applicant, were exempted from the anti-dumping duties at issue.

6 In its undertaking offered in accordance with Article 8(1) of the basic regulation, the applicant undertook inter alia to apply the minimum prices fixed for exports of steel wire ropes to the European Union, in order to eliminate the injurious effects of dumping.

7 The applicant also undertook to ensure that any sale of the product concerned was covered by an invoice which complied with the undertaking (“the Undertaking Invoice”) showing the information described in Annex VI to the undertaking (paragraph 4.1 of the undertaking). Under paragraph 4.2 of the undertaking, the applicant undertook not to issue Undertaking Invoices for “products not covered by the undertaking”. According to paragraph 4.3 of the undertaking, the applicant “is aware that where it appears that it has issued Undertaking Invoices which were not in conformity with the terms of [the said] undertaking, the Commission may declare the declaration of conformity made by [it] on the Undertaking Invoices concerned invalid, and accordingly inform the competent customs authorities of the Member States. This would not prevent the Community institutions from taking any action warranted pursuant to Section 8 of [the said] undertaking”.

8 The applicant also undertook to notify the Commission, in detailed quarterly reports, in accordance with the required technical specifications, of all its sales of steel wire ropes in the European Union, including the sale of steel wire ropes not covered by the undertaking, and to cooperate with the Commission by providing any information considered relevant by the Commission to ensure fulfilment of the undertaking (paragraph 5 of and Annexes II, III, IV and V to the undertaking).

- 9 In addition, under paragraph 6 of the undertaking, the applicant undertook not to circumvent the provisions of the undertaking by, for example, making compensatory arrangements, either directly or indirectly, with customers in the European Union.
- 10 Finally, so far as concerns breach of the undertaking, Section 8, entitled “Breaches or withdrawals”, provides:

“The [applicant] is aware that, without prejudice to paragraph 8.3:

- circumvention of this undertaking or failure to cooperate with the ... Commission in monitoring this undertaking shall be considered as a breach of this undertaking. This shall include failure to submit the reports required under paragraph 5 within the prescribed time-limits except in the cases of force majeure;
- the ... Commission may, where it has reason to believe that the undertaking is being breached, immediately impose a provisional anti-dumping duty on the basis of best information available pursuant to Article 8(10) of the basic regulation;
- pursuant to Article 8(9) of the basic regulation, where the undertaking has been breached, or withdrawn either by the ... Commission or by the [applicant], a definitive anti-dumping duty may be imposed on the basis of the facts established within the context of the investigation which led to the undertaking, provided that the [applicant], except in the case of withdrawal of the undertaking by the [applicant] itself, has been given an opportunity to comment.”

...

- 12 By its Decision 1999/572/EC of 13 August 1999 accepting undertakings offered in connection with the anti-dumping proceedings concerning imports of steel wire ropes and cables originating in the People’s Republic of China, Hungary, India, the Republic of Korea, Mexico, Poland, South Africa and Ukraine (OJ 1999 L 217, p. 63), the Commission inter alia accepted the applicant’s undertaking.
- 13 In the context of an investigation to verify compliance with the undertaking, in accordance with paragraphs 5.1 and 5.4 of the undertaking, the Commission visited the applicant’s premises in both India and the United Arab Emirates in January and February 2005.
- 14 By letter of 12 May 2005, the Commission informed the applicant that, following the investigation, it considered that the applicant had infringed the undertaking on three occasions, and that it was therefore proposing to withdraw acceptance of the undertaking.
- 15 By letters of 20 May 2005, 29 August 2005 and 6 September 2005, the applicant submitted its comments on the finding of a breach of the undertaking and on the withdrawal envisaged by the Commission.
- 16 On 8 November 2005, the Council adopted Regulation (EC) No 1858/2005 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 the basic regulation (OJ 2005 L 299, p. 1). By Regulation No 1858/2005, the Council decided that the anti-dumping measures applicable to imports of the product concerned originating in, inter alia, India, established by Regulation No 1796/1999, should be extended for a further five years.

- 17 By the [contested] [d]ecision, the Commission decided to withdraw its acceptance of the undertaking relating to imports of steel ropes and cables offered by the applicant and, therefore, to amend Decision 1999/572 accepting the undertaking. At the same time, the Commission submitted to the Council a proposal for a regulation withdrawing acceptance of the undertaking and imposing definitive anti-dumping duties on the applicant (document COM(2005) 541 final).
- 18 In the contested decision, the Commission found three infringements. First, examination of the applicant's accounting records showed that significant volumes of the product concerned not covered by the undertaking had not been included in the quarterly sales reports submitted by the applicant to the Commission, contrary to the provisions of paragraph 5.2 of and the first paragraph of Annex IV to the undertaking. Secondly, the Commission found that the goods in question had been sold by the applicant, in infringement of paragraphs 4.2 and 4.3, to its related importers in the United Kingdom and Denmark and included on Undertaking Invoices. Thirdly, the verification at the premises of Brunton Wolf Wire & Ropes in Dubai revealed that some steel ropes had been exported from the United Arab Emirates to the European Union and declared as having United Arab Emirates origin, although they were in fact of Indian origin.
- 19 On 23 January 2006, the Council therefore adopted [the contested] [r]egulation. Under Article 1 of the contested regulation, the applicant was withdrawn from the list of companies exempt from definitive anti-dumping duties. Consequently, the definitive rate of 23.8% imposed on the applicant under recital 86 and Article 1(2) of Regulation No 1796/1999 and extended by Article 1(2) of Regulation No 1858/2005 was applicable for the products concerned manufactured by the applicant and exported to the European Union.'

The procedure before the General Court and the judgment under appeal

- 5 By application lodged at the Registry of the General Court on 19 April 2006, the appellant brought an action for annulment of the contested decision and the contested regulation, in so far as those EU legislative acts concern it, and an order that the Council and the Commission pay the costs.
- 6 In support of its action at first instance, the appellant put forward two pleas in law, alleging (i) infringement of the principle of proportionality and (ii) an error of law, failure to state reasons and misuse of powers as regards the origin of the products concerned.
- 7 By its first plea, the appellant maintained that, in accordance with the principle of proportionality, the two irregularities observed by the Commission – failure to supply a report on the sales not covered by the undertaking and the use of the Undertaking Invoices – were not material breaches of the undertaking permitting the Commission to impose on it a sanction as drastic as withdrawing acceptance of the undertaking.
- 8 The General Court rejected the first plea, finding in essence, at paragraphs 53 to 55 of the judgment under appeal, that breach of an undertaking is in itself sufficient to trigger its withdrawal and the principle of proportionality does not apply to the question of the imposition per se of anti-dumping duties consequent upon the withdrawal. Withdrawal of acceptance of the undertaking triggers the imposition of definitive anti-dumping duties on the imports in question and the lawfulness of the withdrawal of acceptance of an undertaking cannot, as such, be called into question by reference to that principle.
- 9 The General Court dismissed the second plea relied on by the appellant in support of its action as ineffective, at paragraph 58 of the judgment under appeal, and accordingly dismissed the action in its entirety.

Forms of order sought by the parties

- 10 By its appeal, the appellant claims that the Court should:
- set aside in its entirety the judgment under appeal, as well as the contested decision and the contested regulation, in so far as those EU legislative acts concern the appellant;
 - in the alternative, refer the case back to the General Court, and
 - order the Council and the Commission to pay the costs, including those incurred by the appellant in connection with the proceedings before the General Court.
- 11 In its response, the Council asks the Court to:
- dismiss the appeal;
 - in the alternative, dismiss the action or refer the case back to the General Court; and
 - order the appellant to pay the costs, including those incurred in the proceedings before the General Court.
- 12 In its response, the Commission contends that the Court should dismiss the action and order the appellant to pay the costs incurred in the appeal proceedings and in the proceedings at first instance.

The appeal

Arguments of the parties

- 13 By its single ground of appeal, the appellant submits that the General Court was wrong to hold that breach of an undertaking is in itself sufficient to trigger its withdrawal and that, since such withdrawal was equivalent to the imposition per se of anti-dumping duties, to which the principle of proportionality does not apply, it follows that the lawfulness of the withdrawal of acceptance of an undertaking cannot, as such, be called into question by reference to that principle.
- 14 The appellant also maintains that the General Court clearly distorted the facts by stating, at paragraph 48 of the judgment under appeal, that ‘it is common ground between the parties that the applicant did not comply with the undertaking at issue’, since that statement suggests, wrongly, that the appellant acknowledged that it had infringed the undertaking for the purpose of Article 8 of the basic regulation, which is not the case. Indeed, the appellant never accepted that the errors or irregularities committed were sufficiently serious to amount to breaches of the undertaking within the meaning of Article 8(9). Moreover, all its products covered by the undertaking were sold above the minimum price, the other products not covered by the undertaking were actually subject to appropriate anti-dumping duties and the verification process worked efficiently, with the appellant’s full cooperation.
- 15 In particular, the appellant submits that the decision to withdraw acceptance of the undertaking, pursuant to Article 8(9) of the basic regulation, constitutes a step prior to the imposition anti-dumping duties and amounts to an act of the EU institutions that is subject to judicial review, in the light of the principle of proportionality. The appellant is of the view that any decision concerning undertakings given in accordance with Article 8, including the acceptance of an undertaking, the conditions imposed by it and its provisional withdrawal, is open to judicial review, by reference to that principle. According to the appellant, any other approach would be tantamount to conferring on the

EU institutions, in particular the Commission, an unlimited discretion in their application of Article 8. Furthermore, if that principle were not applied to the fulfilment of an undertaking, that would lead to the removal of any need for reasons to be given in decisions by which the Commission withdraws undertakings and the impossibility of making the validity of such acts and their reasoning subject to review by the Court.

- 16 As regards the arguments alleging distortion of the facts at paragraph 48 of the judgment under appeal, the Council states that, during the administrative investigation and the proceedings before the General Court, the appellant never contested the Commission's finding that the appellant had (i) failed to report to the Commission the sales of the product concerned that were not covered by the undertaking and (ii) included in Undertaking Invoices sales of the product concerned not covered by the undertaking, and that, as a consequence, it had failed to comply with its undertaking. Accordingly, the General Court's statement at paragraph 48 of the judgment under appeal is correct. With regard to the claim that the second sentence of paragraph 51 of that judgment might suggest that the appellant recognised that the breaches of the undertakings were material, the Council considers that that paragraph relates only to Case T-340/99 *Arne Mathisen v Council* [2002] ECR II-2905, and the two conditions that need to be satisfied in order for the Commission to be lawfully entitled to withdraw acceptance of an undertaking and impose a definitive anti-dumping duty.
- 17 According to the Council, the wording of Article 8(9) of the basic regulation is clear, to the effect that withdrawal of acceptance of an undertaking is a direct consequence of a breach of an undertaking, just as the imposition of an anti-dumping duty is a direct consequence of the withdrawal of acceptance of an undertaking. There is no distinction between material and non-material breaches of an undertaking. If an exporter gives an undertaking and the Commission accepts it, the exporter has to comply with all the terms of that undertaking. The Council points out that undertakings are based on a relationship of trust between the exporter, who, by means of the undertaking, can avoid the payment of duties, and the Commission. The Commission has a duty vis-à-vis the Union industry to ensure that undertakings are as effective as the imposition of anti-dumping duties.
- 18 The Council is of the view that a decision to withdraw acceptance of an undertaking in the event of a breach of the undertaking is not subject to a separate test as regards the proportionality of such a decision. However, it observes that the Commission can withdraw acceptance of an undertaking only if it finds that there has been a breach of the terms of the undertaking. Such a finding is subject to judicial review in the normal way.
- 19 Lastly, the Council points out that the appellant has never claimed that Article 8(9) of the basic regulation itself violates the principle of proportionality by providing that any breach of an undertaking is sufficient to allow the Commission to withdraw acceptance of the undertaking.
- 20 The Commission endorses the Council's observations as to the substance of the case. It also points out that Article 8 of the basic regulation does not confer on the appellant any entitlement to an undertaking and that the Commission has a broad discretion as to whether or not to accept an undertaking offered by a company. In reality, the appellant's plea amounts to a challenge of the validity of the basic regulation as such, in the light of the principle of proportionality, in so far as it is clear from the wording of that regulation that the Commission has the power to impose anti-dumping duties once there has been a breach of an undertaking. It submits that the interpretation of Article 8 proposed by the appellant, if accepted, would seriously undermine the effectiveness of undertakings, which are meant to have the same effect as anti-dumping duties, namely to remove the injurious effect of dumping.
- 21 The Commission submits that it is under a duty to put an end to injurious dumping and the monitoring of an undertaking is therefore crucial. For that reason, technical breaches relating to reporting obligations are very important, as the reports in question are meant to enable the Commission to fulfil its duty to monitor compliance with the undertaking. Article 8(7) of the basic

regulation therefore leaves the Commission very limited discretion in that respect since it provides that, in the context of that monitoring, non-compliance with such requirements is to be construed as a breach of the undertaking.

Findings of the Court

- 22 First, it should be noted that, under Article 8(1) of the basic regulation, where a determination of dumping and injury has been made, the Commission has the power to accept satisfactory voluntary undertaking offers submitted by any exporter to revise its prices in order to ensure that the products concerned are not exported at dumped prices if it is satisfied that the injurious effect of the dumping is eliminated as a result of the undertaking.
- 23 In the present case, it is apparent from paragraph 12 of the judgment under appeal that the Commission decided to accept the appellant's undertaking to apply the minimum prices fixed for exports of steel wire ropes to the European Union, in order to ensure that the injurious effects of the dumping were eliminated.
- 24 In accordance with the purpose of Article 8 of the basic regulation, the appellant was required, under the terms of the undertaking which it had given, not only to ensure that it genuinely complied with the undertaking but also to undertake effective monitoring of the implementation of the undertaking by cooperating with the Commission in the context of the relationship of trust on which the Commission's acceptance of such an undertaking is based.
- 25 At paragraph 48 of the judgment under appeal, the General Court stated that the appellant had failed to comply with its undertaking, first, by infringing its obligation to provide quarterly reports of sales of the product concerned not covered by the undertaking and, secondly, by infringing its obligation not to issue Undertaking Invoices for products not covered by the undertaking.
- 26 By the second part of the single ground of appeal, which must be considered first, the appellant submits that the General Court clearly distorted the facts by stating that it acknowledged that it had infringed its undertaking within the meaning of Article 8 of the basic regulation, whereas the appellant has always maintained that there was no serious breach of the undertaking.
- 27 It should be noted in that regard that a distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (Case C-535/06 P *Moser Baer India v Council* [2009] ECR I-7051, paragraph 33 and case-law cited).
- 28 It is apparent from the judgment under appeal that the appellant never contested the Commission's finding that it had (i) failed to report to the Commission the sales of the product concerned that were not covered by the undertaking and (ii) included in Undertaking Invoices sales of the product concerned not covered by the undertaking. The General Court was therefore entitled to find that the appellant had failed to comply with the terms of the undertaking.
- 29 In so far as the appellant is seeking to call into question the General Court's assessment of the facts, essentially by challenging its finding that the terms of the undertaking were not complied with, that argument must be rejected as inadmissible, since it seeks to obtain a review of the findings of fact made by the General Court, for which the Court of Justice has no jurisdiction on appeal.
- 30 The complaint that the General Court suggested, at paragraph 51 of the judgment under appeal, that the appellant did not dispute the fact that it had committed serious errors must be rejected as a misreading of that paragraph. The General Court's statement that 'the applicant does not dispute that those conditions are fulfilled' does not in any way signify that that court considered that the appellant admitted that it had committed serious errors. On the contrary, the General Court's reasoning at

paragraph 51 hinges on the fact that ‘any breach’ of an undertaking automatically triggers the withdrawal of acceptance of the undertaking, without there being any need to quantify the magnitude of the breaches committed.

- 31 By the first part of its single ground of appeal, the appellant claims that the General Court was wrong to find, *inter alia* at paragraph 51 of the judgment under appeal, that it does not dispute that there was a material breach of the undertaking for the purpose of Article 8(9) of the basic regulation, a provision which empowers the Commission to withdraw the undertaking. According to the appellant, the decision to withdraw acceptance of the undertaking, pursuant to that provision, is a step prior to the imposition of anti-dumping duties and entails a discretion on the part of the Commission that is subject to review by the EU judicature, in the light of the principle of proportionality.
- 32 It is clear from Article 8(9) of the basic regulation that an anti-dumping duty is automatically imposed if the Commission withdraws acceptance of an undertaking. On the other hand, the Commission enjoys the discretion referred to above for the purpose of defining the nature of the undertaking infringed and determining whether, in accordance with the principle of proportionality, it is necessary to withdraw acceptance of the undertaking. In those circumstances, it is the exercise of that discretion which, contrary to what was stated by the General Court at paragraphs 51 and 55 of the judgment under appeal, is subject to review by the EU judicature.
- 33 The second subparagraph of Article 8(9) of the basic regulation provides that the Commission’s assessment of whether or not a breach of an undertaking has occurred is normally to be concluded within six months, but in no case later than nine months following a duly substantiated request submitted by any interested party or Member State for an examination as to whether such a breach has occurred.
- 34 In the present case, as observed at paragraph 28 above, it is apparent from paragraph 48 of the judgment under appeal that the appellant did not comply with its undertaking in that it infringed its obligation (i) to submit the quarterly reports required and (ii) not to issue undertaking invoices for goods not covered by the undertaking. Recital 26 in the preamble to the contested decision states that the Commission ‘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’. According to that recital, the Commission considers that it is only ‘by being in possession of the full details of sales of the product concerned to the Community [that the Commission] can ... effectively monitor an undertaking and determine whether it is being respected and the injurious effects of dumping removed[; i]f sales reports are incomplete or inaccurate, this casts doubt on the company’s respect of the undertaking as a whole [so that] [c]ompliance with the reporting formalities must therefore be regarded as forming part of the primary obligations of the companies concerned’.
- 35 Moreover, it is clear that the accomplishment of the Commission’s task of monitoring undertakings is dependent on the accuracy of the documents provided in the performance of the undertaking entered into by the exporter concerned. By failing to comply with such a reporting obligation attaching to an undertaking such as that at issue in the main proceedings, the exporter breaches the trust that is necessary to the relationship based on cooperation established by that undertaking. Accordingly, such a breach of the terms of the undertaking may render it ineffective. In those circumstances, the reporting obligations must be regarded as primary obligations for the purpose of the proper functioning of the system of undertakings by which it is possible to avoid the imposition of anti-dumping duties.
- 36 It should be recalled that the objective of Article 8 of the basic regulation, which seeks to eliminate the injurious effects of dumping suffered by the Union industry, is based primarily on the exporter’s obligation to cooperate and the monitoring of the proper fulfilment of the undertaking given by the exporter.

- 37 Thus, the appellant has failed to show that the Commission's assessment that it did not comply with a primary obligation is incorrect.
- 38 Indeed, the appellant's arguments set out at paragraphs 27 to 43 of the judgment under appeal cannot invalidate the Commission's assessment of the obligations infringed by the appellant as primary obligations.
- 39 Given that it is common ground between the parties that the appellant failed to comply with its undertaking as regards both its obligation to submit quarterly reports on sales of the product concerned not covered by the undertaking and its obligation not to issue Undertaking Invoices for products not covered by the undertaking and, as a consequence, the assessment as to whether there had been a breach of a primary obligation attaching to the undertaking cannot be regarded as incorrect, the Commission was entitled to withdraw acceptance of the undertaking given by the appellant and did not, in so doing, infringe the principle of proportionality. That being so, the Commission was also required, under Article 8(9) of the basic regulation, to impose a definitive anti-dumping duty on the appellant.
- 40 In view of all the foregoing considerations, the single ground of appeal relied on by the appellant cannot be accepted and must, therefore, be rejected.

Costs

- 41 Under Article 184(2) of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to costs. Article 138(1) of those rules, which applies to appeal proceedings by virtue of Article 184(1) thereof, provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the appellant has been successful and the Council and the Commission have applied for an order for costs, the appellant must be ordered to pay the costs.

On those grounds, the Court (Third Chamber) hereby:

- 1. Dismisses the appeal;**
- 2. Orders Usha Martin Ltd to pay the costs of the appeal proceedings.**

[Signatures]