COMMISSION REGULATION (EC) No 1274/2003

of 11 June 2003

amending Regulation (EC) No 230/2001 imposing a provisional anti-dumping duty on certain iron or steel ropes and cables originating in the Czech Republic, Russia, Thailand and Turkey and accepting undertakings offered by certain exporters in the Czech Republic and Turkey

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], as last amended by Regulation (EC) No 1972/2002 [2], and in particular Article 8 thereof,

After consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

(1) On 5 May 2000, an anti-dumping proceeding was initiated by the Commission [3] on imports of certain iron or steel ropes and cables (the product concerned) originating, *inter alia*, in Turkey.

(2) This proceeding ultimately resulted in a definitive anti-dumping duty being imposed by Council Regulation (EC) No 1601/2001 [4], as last amended by Regulation (EC) No 2288/2002 [5], of 2 August 2001 in order to eliminate the injurious effects of dumping.

(3) Provisional measures had been imposed by Commission Regulation (EC) No 230/2001 [6], as last amended by Regulation (EC) No 2303/2002 [7]. In parallel, the Commission accepted, *inter alia*, a price undertaking from the Turkish exporting producer Has Celik ve Halat San Tic AS (Has Celik) by Article 2(1) of Commission Regulation (EC) No 230/2001. Imports of the product concerned produced and directly exported to the Community by Has Celik were exempted from the anti-dumping duty by Article 2(2) of the same Regulation. Exemption from the duty is, *inter alia*, conditional on the presentation of a commercial invoice accompanying goods subject to an undertaking (commercial invoice) as requested by Article 2(2) of Regulation (EC) No 230/2001 and containing at least the information specified in the Annex to the same Regulation.

B. FAILURE TO COMPLY WITH THE UNDERTAKING

(4) The scope of the undertaking is limited to certain types of the product concerned which are listed in an Annex to the undertaking (product covered). Each product type is identified by a Product Control Number (PCN). Product types not falling into this scope are subject to the payment of anti-dumping duties and no commercial invoice must be issued for these goods.

(5) In addition, Has Celik undertook to ensure that the prices of the product covered are not, on a weighted average semesterly basis, per product type, sold below a Minimum Import Price (MIP). Has Celik can make individual export transactions within a certain threshold below the MIP, as long as the weighted average sales price for all transactions, on a semesterly basis, per product type, is at or above the MIP.

(6) An on-spot verification visit to Has Celik revealed that it had included in the commercial invoices product types not covered by the undertaking, either by indicating no PCN at all or by indicating PCNs that were not listed in the undertaking. As a result, imports of these products into the Community unduly benefited from the exemption to the anti-dumping duty.

(7) Furthermore, the verification confirmed that sales of certain product types covered by the undertaking had been made, on a weighted average semesterly basis, at prices below the corresponding MIPs.

(8) In view of the findings set out in recitals 6 and 7 the Commission concluded that a breach of the undertaking has occurred.

(9) Has Celik was informed of the essential facts and considerations on the basis of which the Commission's acceptance of their undertaking would be withdrawn and of the recommendation to impose definitive duties on imports into the Community of the product concerned manufactured by them. It was also granted a period within which to request a hearing. Has Celik presented comments and requested a hearing which was granted by the Commission services.

(10) Has Celik argued that it had not had the intention to circumvent the provisions of the undertaking and that it had informed its customers about the obligation to pay anti-dumping duties for product types not covered by the undertaking. In addition, it claimed that the quantities unduly benefiting from the exemption of the anti-dumping duty were insignificant. Finally, regarding the non-respect of the MIPs, Has Celik argued that it had sold those products within the flexibility threshold.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 127, 5.5.2000, p. 12.
[4] OJ L 211, 4.8.2001, p. 1.
[5] OJ L 348, 21.12.2002, p. 52.
[6] OJ L 34, 3.2.2001, p. 4.
[7] OJ L 348, 21.12.2002, p. 80.

(11) The arguments presented by Has Celik did not, however, alter the Commission's initial view that a breach of the undertaking occurred. In this respect, it should be noted that intention is not a decisive criterion for assessing whether an undertaking has been breached or not. Also, Has Celik admitted that its customers had not actually paid the anti-dumping duties in respect of the product types referred to in recital 4. Moreover, the argument that the quantities were insignificant cannot be accepted: bearing in mind that any breach of an undertaking can be a sufficient ground for withdrawal of its acceptance by the Commission. Indeed, in the present case, the quantities were not insignificant and this aspect of the breach should not be considered in isolation but taking into account the fact that it is twofold. Concerning the second feature of the breach, it is not correct that the sales have been made within the flexibility threshold. Indeed as explained in recital 5 above, whilst this flexibility allows the selling of some quantities below the MIP, this is limited to the overall average per half year of such sales resulting in a price at or above the MIP. Here, Has Celik was found not to have respected this MIP on a weighted average semesterly basis for each product type.

(12) Therefore, acceptance of the undertaking offered by Has Celik should be withdrawn and definitive anti-dumping duties imposed against it.

(13) In view of the above, the table in Article 2 of Regulation (EC) No 230/2001 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The undertaking accepted from company Has Celik ve Halat Sanayi Ticaret AS is hereby withdrawn.

Article 2

1. The table in Article 2(1) of Regulation (EC) No 230/2001 is replaced by the following table.

Country	Company	TARIC additional code
Czech Republic	ŽDB as	A216

2. Article 2(2) of Regulation (EC) No 230/2001 is hereby replaced as follows:

'Imports declared for release into free circulation under TARIC additional code A216 shall be exempt from the anti-dumping duties imposed by Article 1 if they are produced and directly exported (i.e. invoiced and shipped) by the company mentioned in Article 2(1) to a company acting as an importer in the Community. Such imports shall also be accompanied by a commercial invoice containing at least the elements listed in the Annex.'

Article 3

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, 11 June 2003.

For the Commission

Pascal LAMY

Member of the Commission