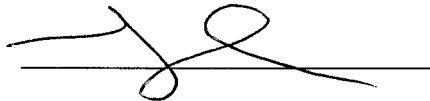


## **Report No. 252**

# **Interim review of the countervailing duty on stranded wire, ropes and cables of iron or steel, not electrically insulated originating in or imported from India: Final determination**

The International Trade Administration Commission of South Africa herewith presents its  
**Report No. 252: INTERIM REVIEW OF THE COUNTERVAILING DUTY ON STRANDED  
WIRE, ROPES AND CABLES OF IRON OR STEEL, NOT ELECTRICALLY INSULATED  
ORIGINATING IN OR IMPORTED FROM INDIA: FINAL DETERMINATION**



**Itumeleng Masege  
ACTING CHIEF COMMISSIONER**

**PRETORIA**

6/09/ 2007

# 1. APPLICATION AND PROCEDURE

- 1.1 This investigation was conducted in accordance with the International Trade Administration Act, 2002, the World Trade Organisation Agreement on Subsidies and Countervailing Measures (the SCM Agreement).
- 1.2 The application was lodged by Adams and Adams, on behalf of Usha Martin Limited (the Applicant), being the manufacturer and exporter of the subject product in India.
- 1.3 The Applicant alleged that the Duty Entitlements Passbook Scheme (DEPB) benefit has been reduced significantly to 3 per cent of free on board price (FOB) and that the Income Tax Exemption Scheme (ITES) has been terminated. It submitted that this reduced the total subsidy received to below 3%.
- 1.4 On 29 November 2006, the Commission accepted the application as properly documented and that the Applicant submitted a *prima facie* case to indicate the significantly changed circumstances.
- 1.5 The investigation was initiated through Notice No. 24, in Government Gazette No. 29535 published on 19 January 2007.
- 1.6 The information submitted by the Applicant was verified during the week of 02 to 05 April 2007.
- 1.7 On 31 May 2007 the Commission made a preliminary determination that there were significantly changed circumstances and that the benefit conferred by the DEPB has been reduced, which it concluded warranted an amendment of the current duty.
- 1.9 The Commission sent out letters to all interested parties, informing them of the “essential facts” which were being considered by the Commission. The Commission invited comments from interested parties on those “essential facts” being considered.
- 1.10 Comments were received from Webber Wentzel Bowens (WWB), on behalf of the SACU producer of the products.
- 1.11 After considering all parties’ comments in respect of the “essential facts” letters, the Commission made a final determination, that there were significantly changed circumstances and that the benefit conferred by the DEPB has been reduced.
- 1.12 The Commission, therefore, decided to recommend to the Minister of Trade and Industry that the current countervailing duty on stranded wire, ropes and cables of, iron or steel, not

electrically insulated, excluding brass plaited tyre reinforcing cord and conveyer belt cord, originating in or imported from India be amended.

## 2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

### 2.1 IMPORTED PRODUCTS

#### 2.1.1 Description

The subject products are described as stranded wire, ropes and cables, of iron or steel, not electrically insulated, of a diameter exceeding 8 mm (excluding that of wire of stainless steel, that of wire plated, coated or clad with copper and that identifiable as conveyor belt cord) (scientific name), commonly identified or referred to as steel wire ropes (common name), and is sold under the trade name(s) of steel wire ropes.

#### 2.1.2 Country of origin/export

The subject product originates and is exported from India.

#### 2.1.3 Tariff classification

The subject product is classifiable as follows:

Table 2.1.3(a)

TARIFF SUBHEADING	DESCRIPTION	UNIT	DUTY	EU
73.12	Stranded wire, ropes, cables, plaited bands, slings and the like of, iron or steel, not electrically insulated:			
7312.10	Stranded wire, ropes and cables			
7312.10.20	Other stranded wire	Kg	5%	5%
7312.10.25	Ropes and cable, of wire which is not plated, coated or clad	Kg	5%	5%
7312.10.40	Ropes and cables, of wire which is plated, coated or clad with zinc	Kg	5%	5%

#### 2.1.4 Other applicable duties and rebates

The following countervailing duties on the subject products are currently applicable:

Exporter	Product	Rate of duty
All exporters	Stranded wire, ropes and cables of iron or steel, not electrically insulated, (excluding those of wire of stainless steel, brass plaited tyre reinforcing cord, conveyer belt cord, those of wire plated, coated or clad with copper and excluding ropes and cables of a diameter of 8 mm and less) classifiable under tariff sub-headings 7312.10.20, 7312.10.25 and 7312.10.40	17%

Webber Wentzel Bowens (WWB), on behalf of Scaw Metals, the SACU producer of the products submitted that there was a conflict between the tariff classification of the subsidised imports in respect of which the Commission initiated the Interim Review and the tariff classification of the subsidised imports in respect of which Usha Martin instituted its application.

The Commission found that Usha Martin correctly indicated that its subsidised imports are classifiable under tariff subheadings 7312.10.10, 7312.10.20 and 7312.10.30, as the questionnaire it completed when it lodged the application required it to provide the Customs classification under which it exports the goods, which the Applicant understood to mean the national tariff classification of the product in India.

Furthermore, the Commission's notice of initiation clearly indicated that the subject imports under review are stranded wire, ropes and cables of iron or steel, not electrically insulated, classifiable under tariff subheadings 7312.10.20, 7312.10.25 and 7312.10.40. No countervailing duties were imposed on tariff subheadings 7312.10.10 and 7312.10.30.

### **3. CHANGED CIRCUMSTANCES**

Countervailing regulation 45.1 provides as follows:

*“The Commission will only initiate an interim review if the party requesting such interim review can prove significantly changed circumstances”*

The Applicant submitted that it brought the application for the interim review of the countervailing duties on the subject product because a countervailing duty of 17 per cent which was imposed in 2002 is no longer warranted as the DEPB rate has been reduced to 3 per cent on FOB, and the ITES has been terminated. It submitted that this reduced the total subsidy received to below 3 per cent.

The Applicant submitted that the countervailing duty of 17per cent should be reduced to zero, under the circumstances provided for in section 27(11), of the SCM Agreement.

The Applicant substantiated its allegations by providing the calculations, which were verified, on the effects of the subsidy programmes to its exports to SACU countries and the rest of the world during the financial period 2005-2006.

Based on the verified information, the Commission found that the total export incentive received by the Applicant amounted to about 2.87 per cent of fob value of exports. The export incentive on exports destined for SACU was calculated to be 2.76 per cent of fob value.

#### **Comments by WWB**

WWB, on behalf of Scaw Metals submitted detailed comments on changed circumstances, other subsidy programmes as well as practices by other jurisdictions. which are summarised below:

##### **1. Changed circumstances**

WWB submitted that the alleged reduction in the DEPB and the termination of the ITES are temporary in nature and are subject to change depending on the economic

climate. It submitted that such a temporary change in circumstances is not and cannot be sufficient to justify the removal of the countervailing duties.

In support of its statement, WWB referred the Commission to a recently reported review of subsidy schemes which the Indian government has embarked upon in an effort to mitigate the adverse effect which the strengthening Indian Rupee had on Indian exporters. According to a newspaper article taken from the Times of India, New Delhi, of 14 June 2007 (the "Article") the Commerce Minister, Kamal Nath had recommended to give loans to exporters at lower Interest Rates; increase the Duty Drawback by 5 percent; notify, "*without delay*", the service tax exemption and refunds for exports which were apparently announced in the 2007 foreign trade policy; and reduce the premium on insurance cover on exports.

WWB submitted that subsequent to the publication of this Article, Scaw has since learned that the Government of India has published or is about to publish in its Gazette as public notice No. 17 (RE-2007) / 2004-2009 New Delhi dated the 12 July 2007 and public notice No. 18(RE-2007) / 2004-2009 New Delhi dated the 13 July 2007 ("Government Notices 17 and 18") the DEPB rate of 7 percent in respect of the subsidised exports.

2. Other subsidy programmes

WWB submitted that there is a range of subsidies available to Usha Martin which should be investigated by the Commission. It disagreed with the Commission's approach to confine itself only to subsidies in respect of which there are countervailing duties currently in force. Such approach is inconsistent with the proper interpretation of International Trade Administration Act ("ITA Act"), CVR and the World Trade Organisation Agreement on Subsidies and Countervailing Measures (the "SCM Agreement").

3. Other jurisdictions

WWB reiterated its submission that the EC and US decisions are relevant and correct and that the Commission should follow them.

The Commission noted the comments made by the exporter that the duty be withdrawn, on the basis that India is listed as a developing country in Annex VII of the SCM Agreement and

therefore its de minimis threshold is 3 per cent and not 2 per cent. However, in terms of Article 27.11 this provision that the Applicant is referring to, expired in 2003 i.e. eight years from the date of entry into force of the WTO Agreement. The Commission, therefore, found that the benefit conferred by the DEPB although low, is not negligible within the context of Article 27.11 of the SCM Agreement.

On the comments by WWB on changed circumstance, it was established during the investigation that the subsidy programmes emanated from an export growth promotion policy from the Ministry of Commerce (MOC), and as with such policies was used to address export concerns in the Indian economy for a certain period. To achieve its goals the subsidy programmes were subject to review depending on the economic climate, and during the investigation period the ITES was discontinued and the DEPB reduced from 10 percent to 3 percent. The Commission concluded that a change in government policy, which is beyond the control of the companies, constituted a significantly changed circumstance.

The Commission further established that the DEPS rate which during the initial investigation was 10 per cent had during the current investigation been reduced to 3 per cent, and was subject to further review as the government of India may deem.

The Commission noted that the newspaper article that was referred to stated that these are policy proposals to be submitted to the Ministry of Finance for consideration, and until approved by the relevant Ministry cannot be implemented. The Government Gazette Notices referred to by WWB, are not published notices and therefore not official documents. Furthermore, these proposed changes to the trade policy were not in place during the period of investigation and could not, therefore, be verified, and neither is there any authority for the Commission to conclude that all the benefits outlined in the proposed policy change would be countervailable and would be utilized by Usha Martin, for purposes of this investigation.

The Commission reiterated its position that the provisions of CVR10 do not extend to the investigation of new subsidies in an interim review. The Commission indicated that the purpose of the changed circumstances review or any other review is to review whether or not the existing duty in place is still necessary based on certain new developments.

The Commission concluded that the provisions of the CVR 10 only applies to new investigations lodged by the domestic industry, where all three elements of a countervailing investigation are considered by the Commission, i.e. subsidisation, injury to the SACU industry and causal link. The Commission, therefore, concluded that it has no legal basis to investigate new subsidy programmes in an interim review.

The Commission reiterated that the decisions by the US and EC are irrelevant to this investigation as they were sunset review investigations and not changed circumstances reviews. The Commission stated that the standard for changed circumstances investigations, is whether or not the Applicant has submitted sufficient information to show that there are changed circumstances to warrant the revocation or amendment of the duties or not as opposed to whether the expiry of the duties is likely to lead to a continuation or recurrence of subsidization and material injury.

## 4. FINAL DETERMINATION

The Commission made a final determination that there are significantly changed circumstances in that the ITES has been terminated and that the benefit conferred by the DEPB has been reduced.

The Commission, therefore, decided to recommend to the Minister of Trade and Industry that the current countervailing duty on stranded wire, ropes and cables of, iron or steel, not electrically insulated, excluding brass plaited tyre reinforcing cord and conveyer belt cord, originating in or imported from India be amended to read as follows:

Exporter	Product	Rate of duty
Usha Martin Limited	Ropes and cables of iron or steel, not electrically insulated, (excluding those of wire of stainless steel, brass plaited tyre reinforcing cord, conveyer belt cord, those of wire plated, coated or clad with copper and excluding ropes and cables of a diameter of 8 mm and less) classifiable under tariff subheadings 7312.10.25 and 7312.10.40	2.76%
Other exporters	Ropes and cables of iron or steel, not electrically insulated, (excluding those of wire of stainless steel, brass plaited tyre reinforcing cord, conveyer belt cord, those of wire plated, coated or clad with copper and excluding ropes and cables of a diameter of 8 mm and less) classifiable under tariff subheadings 7312.10.25 and 7312.10.40	17%
Usha Martin Limited	Stranded wire of iron or steel, not electrically insulated, (excluding those of wire of stainless steel, brass plaited tyre reinforcing cord, conveyer belt cord, those of wire plated, coated or clad with copper and excluding ropes and cables of a diameter of 8 mm and less) classifiable under tariff subheading 7312.10.20	2.87%

Other exporters	Stranded wire of iron or steel, not electrically insulated, (excluding those of wire of stainless steel, brass plaited tyre reinforcing cord, conveyer belt cord, those of wire plated, coated or clad with copper and excluding ropes and cables of a diameter of 8 mm and less) classifiable under tariff subheading 7312.10.20	17%
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