COMMISSION RECOMMENDATION No 1835/81/ECSC

of 3 July 1981

to the Member States on the obligation to publish price lists and conditions of sale and on prohibited practices in the steel trade

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 63 (3) thereof,

Whereas the present situation on the steel market calls for decisive action on selling prices for steel products; whereas the Commission is strengthening its surveillance measures within this framework to ensure that price rules are observed and, by Decision No 1834/81 of 3 July 1981 amending High Authority Decision No 30/53 [1], has further specified the obligations which must be met by the undertakings in respect of their sales organizations;

Whereas the steel market forms a whole within which dealers play an important part, since over half the steel sold in the Community passes through their hands, either as direct sales or as sales from stocks, including sales of products imported from third countries;

Whereas, to arrive to an effective price discipline, the market must be bound to it as a whole and the Commission must supplement its pricing measures by invoking the powers conferred on it by Article 63 (3) of the Treaty to ensure that undertakings engaged in the distribution of steel observe rules on prices and conditions of sale similar to those imposed on the production undertakings by Article 60 of the Treaty and the implementing decisions taken pursuant thereto;

Whereas these provisions must be applied to all categories and qualities of steel covered by the Treaty, either produced in the Community or originating in third countries; whereas they must be applied to dealers' transactions of all types, to direct sales and to sales from stocks;

Whereas it would not be appropriate to extend the obligations imposed on dealers to all distribution undertakings, since the turnover of some such undertakings is not high; whereas in these circumstances the obligations to be imposed on dealers may be limited to distribution undertakings whose annual sales amount to at least 12 000 tonnes per year;

Whereas distribution undertakings belonging to a single group must be subject to these obligations, when their cumulative total of sales amounts to or exceeds the minimum annual tonnage specified above, since they act as a single economic entity;

Whereas, to avoid all discrimination, distribution undertakings selling steel products covered by the Treaty, manufactured from other steel products, in particular undertakings uncoiling hot wide strip which they then cut into sheets or slit into narrow strip, must be treated in the same manner;

Whereas the implementation of this recommendation in certain Member States will necessitate legislative procedures and other measures, the enactment of which will require a certain amount of time; whereas it is therefore necessary to allow a period of sufficient length — up to 30 June 1982 — to implement the recommendation; meanwhile the Commission will itself be imposing equivalent obligations on distribution undertakings directly by Decision No 1836/81/ECSC taken pursuant to Article 95; accordingly the Member States need only ensure the observance and surveillance of these obligations after that date,

HAS ADOPTED THIS RECOMMENDATION:

Article 1

The Member States shall, from 1 July 1982 to 30 June 1984, put into effect measures to ensure that the steel distributive undertakings referred to in Article 2 are subject to the obligations under this recommendation and to secure observance of these obligations by means of appropriate surveillance measures and the sanctions described in Article 16.

The Member States shall inform the Commission of the measures taken not later than 1 January 1982.

[1] OJ of the ECSC, 4. 5. 1953, p. 109.

Article 2

1. This recommendation shall be applicable to distributive undertakings in the Community which effect direct and ex-stock sales, within the common market, of the steel products defined in Annex I to the Treaty, with the exception of scrap, provided that:

— they obtain the steel, in total or in part, directly from steel producers in the Community or in third countries,

and

— their steel resale figures, combined, where appropriate, with the steel resale figures of their parent and/or subsidiary companies and branches, involve a minimum of 12 000 tonnes per year, based on the figures for the last financial year,

and

— they are not selling agencies as defined in Decision No 30/53,

hereinafter called 'steel dealers'.

2. The distributive undertakings referred to in paragraph 1 which market steel products after having processed them shall also be considered as 'steel dealers' and subjected to the same rules. For the purposes of this recommendation, processing occurs when one of the steel products listed in Annex I to the ECSC Treaty is processed into another steel product listed in the same Annex by means of an operation other than rolling.

3. If the steel sales of a distribution undertaking in one year amounts to or exceeds the minimum tonnage laid down in paragraph 1, the provisions of this recommendation shall be applicable to it from the following calendar year.

Article 3

Steel dealers shall be obliged to publish price lists and conditions of sale for direct and ex-stock sales in accordance with the provisions set out below and to communicate them to an administrative department designated by the Member State.

A parent steel-trading company may publish price lists and conditions of sale which are also valid for its subsidiaries and branches.

Article 4

All price lists and conditions of sale published shall contain the following information:

(a) basic prices according to category of products, or basic prices for each grade and category of products;

(b) extras which are applied, indicating:

— extras for size and length,

— extras for grades and quality,

— quantity extras and rebates for each sample and/or for each specified order,

— tolerances not liable to surcharge,

— extras for reduced tolerances,

— also surcharges and increases normally applied in connection with delivery of the various products, particulary surcharges for cutting and slitting;

(c) place of delivery;

(d) method of quotation;

(e) costs in connection with method of shipment;

(f) where they are applied:

— discounts, rebates, premiums or any other kind of benefit to other dealers or users;

(g) terms of payment;

(h) nature and amount of taxes and other charges additional to the prices on the price lists, under the terms offered to purchasers.

Article 5

The price lists of a steel dealer shall not contain prices for products which are not actually offered on the market by the steel dealer concerned.

Article 6

1. (a) Price lists and conditions of sale shall apply not earlier than two clear days after they have been addressed to the department designated by the Government of the Member State.

(b) The steel dealer shall, upon request, communicate price lists and conditions of sale to any interested party.

2. Paragraph 1 shall also apply to any amendment to price lists and conditions of sale.

Article 7

1. For direct sales, steel dealers may also discharge their obligation to publish price lists and conditions of sale by including the following clause in their price lists for the sale of steel, depending on its origin:

(a) 'The prices applicable to direct sales of steel coming from an ECSC producer are the delivered prices obtained from the producer's price list on which the sale was based, to which our published conditions of sale and the following extras are applied . . .'.

(b) 'The prices applicable to direct sales of steel originating in countries, alignment on offers from which has been prohibited by the Commission of the European Communities, are the delivered prices obtained from the price list of the Community undertaking offering the lowest delivered price, after deduction of the penetration margins granted to those countries, to which our published conditions of sale and the following extras are applied . . .'.

(c) 'The prices applicable to direct sales of steel originating in other third countries are the delivered prices obtained from the basic prices for importation published by the Commission of the European Communities, to which our published conditions of sale and the following extras are applied . . .'.

2. A sale is 'direct' when, under sales contracts concluded between the producer and the steel dealer on the one hand and between the steel dealer and his customer who is purchasing the goods on the other hand, the goods are shipped directly from the producer to the steel dealer's customer or in accordance with the customer's instructions. All other sales are ex-stock sales.

Article 8

Steel dealers need not publish rebates for sub-standard products or seconds. They are then required to state on the invoice the reasons for classification as sub-standard products or seconds.

Article 9

It shall be a prohibited practice for a steel dealer to apply in the common market dissimilar conditions (Article 11) to comparable transactions (Article 10).

Article 10

1. Transactions shall be considered comparable where:

(a) they are concluded with purchasers:

— who compete with another, or

— who produce the same or similar goods, or

— who carry out similar functions in distribution; and

(b) they involve the same or similar products; and

(c) their other relevant commercial characteristics do not differ to a material extent.

2. Transactions shall not be considered comparable if, between the dates of their being agreed upon, a lasting change has occurred in the steel dealer's prices or conditions of sale.

Article 11

1. Different conditions which make appropriate allowance for differences in the services rendered or in the carrying out of transactions, applied by a steel dealer to comparable transactions, shall not be considered dissimilar conditions.

2. Conditions shall be considered dissimilar if, without a corresponding increase in price, a steel dealer allows periods for payment more favourable than those generally applied to comparable transactions.

Article 12

Steel dealers who allege that transactions are not comparable (Article 10) or that conditions are not to be considered dissimilar (Article 11) shall, at the request of the department designated by the Government of the Member State, set out the facts and circumstances which may justify this.

Article 13

1. Where a steel dealer aligns his quotation on a competitor's price list, it shall be a prohibited practice for him to apply conditions affording the purchaser a delivered price lower than that at which the purchaser could obtain the goods from the competitor.

2. In calculating delivered prices account shall be taken of transport costs, surcharges or charges borne by the purchaser, less rebates or drawbacks allowed him, in addition to the prices and conditions.

3. When a steel dealer aligns his quotation on the conditions quoted by a competitor outside the Community, the provisions of paragraphs 1 and 2 shall apply correspondingly.

4. Steel dealers who allege that they have aligned their quotation on a lower delivered price of a competitor in the common market or of a competitor outside the Community shall, at the request of the department designated by the Member State, show that the conditions for alignment obtained and that they complied with the provisions of paragraphs 1 to 3 in calculating the aligned price.

The condition for alignment on conditions offered by competitors outside the Community is that is has been imposed by the effective competition of the competitor outside the Community.

Article 14

It shall be a prohibited practice to include in the price charged to the purchaser the amount of any taxes or charges in respect of which the steel dealer is entitled to exemption or drawback.

Article 15

Steel dealers shall be obliged to furnish all the necessary information to the department designated by the Member State, which may carry out all the checks necessary to ensure that the checks necessary to ensure that the abovementioned provisions are being complied with.

For the purpose of such checks, steel dealers shall be obliged to keep, and make available to the agents or officials of Member States authorized to carry out the checks, trading and accounting records including, as a minimum, the documents referred to in sub-paragraphs (a) to (g) of Article 1 of Decision No 14/64 [1].

Article 16

1. Steel dealers who infringe obligations incumbent upon them under provisions adopted in implemenatation of Articles 2 to 14 shall be liable to fines which may amount to twice the value of the sales effected in disregard thereof. If the infringement is repeated, this maximum shall be doubled.

2. Steel dealers who infringe obligations incumbent upon them under provisions adopted in implementation of Article 15 shall be liable to fines not exceeding 1 % of their annual turnover and to penalty payments not exceeding 5 % of the average daily turnover for each day's delay.

Article 17

This recommendation is addressed to the Member States.

Done at Brussels, 3 July 1981.

For the Commission

Étienne DAVIGNON

Vice-President

[1] OJ of 18. 7. 1964, p. 1967/64.