COMMISSION DECISION No 303/96/ECSC

of 19 February 1996

imposing a definitive anti-dumping duty on imports into the Community of certain grain oriented electrical sheets originating in Russia, collecting definitively the provisional duty imposed and accepting an undertaking offered in connection with such imports

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 2424/88/ECSC of 29 July 1988 on protection against dumped or subsidized imports from countries not members of the European Coal and Steel Community [1], and in particular Articles 10 and 12 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Decision No 2450/95/ECSC [2] (hereinafter referred to as 'the provisional duty Decision') imposed a provisional anti-dumping duty on imports into the Community of certain grain oriented electrical sheets originating in Russia and falling within CN codes 7225 10 91 (sheets of a width of 600 mm or more) and 7226 10 31 (sheets of a width of more than 500 mm but less than 600 mm). Those CN codes were changed respectively to 7225 11 00 and to 7226 11 10 by Commission Regulation (EC) No 3009/95 [3].

B. SUBSEQUENT PROCEDURE

(2) Subsequent to the imposition of the provisional anti-dumping duty, the three Russian cooperating exporters and representatives of the Russian authorities were granted a hearing by the Commission further to a request on their part. The abovementioned exporters also made written submissions making known their views on the provisional findings.

(3) Upon request, parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive duty and the definitive collection of the amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure. Their oral and written comments were considered and, where appropriate, the Commission's findings were modified to take account of them.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(4) For the purpose of its preliminary findings, the Commission determined (see recitals (8), (9) and (10) of the provisional duty Decision) that the product concerned was grain-oriented cold-rolled sheets and strips of silicon-electrical steel used for electromagnetic appliances. Owing to the complexity of the manufacturing process, certain quantities of the final product have quality deficiencies and are therefore sold at a discount, as second choice-material. It was however considered that the first- and second-choice material constituted a single like product within the meaning of Decision No 2424/88/ECSC, since they both had the same basic physical characteristics and the same use.

(5) Since no further arguments were presented in this respect, the provisional findings regarding the product under consideration and the like product are confirmed.

D. DUMPING

(6) Russia being a non-market economy country, the Commission provisionally established normal value on the basis of domestic sales, which were found to be made in the ordinary course of trade to independent customers, in an analogue country, namely Brazil (see recitals (11), (12) and (13) of the provisional duty Decision).

(7) At the preliminary stage, the export price was calculated as the weighted average selling price actually paid or payable for all export transactions to the Community during the investigation period

[1] OJ No L 209, 2. 8. 1988, p. 18.
[2] OJ No L 252, 20. 10. 1995, p. 2.
[3] OJ No L 319, 30. 12. 1995, at pp 571 and 572.

(January 1993 to April 1994), since all export transactions were dumped (see recital (14) of the provisional duty Decision).

(8) The comparison between export price and the weighted average normal value in the analogue country showed the existence of dumping, the corresponding margin expressed as a percentage of the free-at-Community frontier price amounting to 73,46 % (see recitals (15) and (16) of the provisional duty Decision).

(9) No observations were submitted on the methodology used by the Commission in its preliminary findings for determining dumping, and the findings, as set out in recitals (11) to (16) of the provisional duty Decision, are confirmed.

E. COMMUNITY INDUSTRY

(10) The Commission determined (see recital (17) of the provisional duty Decision) that the Community industry was composed of three cooperating producers which represented 70 % of the Community production. No representation has been received concerning these findings, which are therefore confirmed.

F. INJURY

(a) Community consumption, volume and market share of the dumped imports

(11) No comments were received with regard to the provisional findings on Community consumption, volume and market share of the dumped imports as set out in recitals (18), (19) and (20) of the provisional duty Decision. Accordingly those findings are confirmed.

(b) Prices of the dumped imports

(12) The Russian exporters claimed that, in its provisional findings (see recitals (21) and (55) of the provisional duty Decision), the Commission, for the purpose of determining price undercutting and price underselling, did not clarify how it had adjusted the price of the Russian exporters in order to bring it to a free customer price comparable in terms and conditions to the price offered by the Community producers. They claimed that price comparability should be assessed on the basis of 'customer perception' rather than on the basis of a merely theoretical comparability. They requested, in particular, adjustments for payment terms and conditions of supply. They did not, however, submit any supporting evidence in respect of this claim.

(13) It should be recalled that for assessing the level of price undercutting or price underselling, the Russian export prices were adjusted upwards by an amount corresponding to the margin of a distributor. This margin was estimated on the basis of the information available from other steel products cases, since no importer cooperated with the present investigation. This margin includes financing and handling costs, together with a profit margin of 5 % on turnover.

The price comparison was therefore made at the same level of trade, and indeed on the basis of similar payment and delivery terms.

(14) With regard to the argument concerning conditions of supply, it is noted that any additional costs which may result from such conditions are normally reflected in the costs incurred by the importer fulfilling the role of a distributor. Since the Commission, when making the comparison, has included the margin of a Community importer/distributor trading in Russian material, no additional adjustment for any costs resulting from these conditions of supply is warranted in the absence of any evidence to the contrary.

(15) In those circumstances, the claim has to be rejected and consequently the level of price undercutting and price underselling, which was determined at the preliminary stage, confirmed.

(c) Situation of the Community industry

(16) As set out in recitals (22) to (28) of the provisional duty Decision, it was provisionally concluded that, between 1990 and the end of the investigation period (end of April 1994), the Community industry suffered material injury which consisted mainly of a decline in deliveries with a resulting loss of market share as well as price depression, factors which together led to a decline in profits and, overall, financial losses.

(17) Since no comments were made in this respect, these conclusions are confirmed.

G. CAUSATION

(18) The Commission determined (see recitals (29) to (37) of the provisional duty Decision) that, notwithstanding the fact that other factors might also have negatively affected the Community industry's position, the dumped imports from Russia, taken in isolation, had caused material injury to the Community industry. In the absence of new arguments, those findings are confirmed.

H. COMMUNITY INTEREST

(19) At the preliminary stage, the Commission found (see recitals (38) to (49) of the provisional duty Decision) that it was in the interest of the Community to impose protective anti-dumping measures in order to prevent further injury being caused by the dumped imports concerned. No representation having been received in this respect, those findings are confirmed.

I. DUTY

(20) Provisional measures took the form of an ad valorem anti-dumping duty set at the injury elimination level found during the investigation, since it was lower than the dumping margin found (see recitals (50) to (57) of the provisional duty Decision).

(21) In their submission, the Russian exporters argued that in the calculation of the target price for first-quality material, the Commission should have reduced the cost of production by the extra revenue resulting from the sales of second-choice material.

(22) It has to be observed that first- and second-choice material result from the same production process with exactly the same inputs for raw materials, labour, energy and other costs. Consequently, different specific costs of production for first- and second-choice material do not exist. To credit the lower sales revenue of second-choice material to the total cost of production, as was suggested by the Russian exporters, would in fact artificially increase the cost of the remaining first-quality product. This would be so because, in following this method suggested, the costs of producing the second-choice material would logically have to be attributed to the costs for first-choice material.

(23) Therefore, the Commission has determined the target price for first choice material on the basis of the average cost of production (that for first- and second-choice material taken together) as applied by the Community producers in their accounting practices, plus a reasonable profit of 5 % on turnover.

(24) With regard to the determination of the target price for second-choice material, it was further argued that the Commission should have used the normal discounts granted by the Community producers on the Community market for these products and not, as applied for the provisional determination, those found on the Brazilian market.

(25) The Commission observes that the discounts applied by the Community producers cannot be considered an appropriate benchmark for correctly determining the price differential between first- and second-choice material, owing to the fact that Community producers' prices were subject to the downward pressure of dumped products from Russia, which were supplied in increasing volumes, undercutting Community producers' prices, thereby depressing those prices.

(26) However, the Commission accepts that the discounts applied by the Russian exporters for their second-choice material on the Community market to reflect adaquately the price reduction required for this product by the users in the Community in order to cope with its specific quality deficiencies and that those discounts are more appropriate than the discounts on the Brazilian market used by the Commission for its provisional findings.

(27) In those circumstances and in the absence of any other reasonable indicator, in order to reach a target price for second-quality material, the target price calculated for first-choice material has been reduced by an amount representing the average price differential which was observed between Russian first- and second-choice material when imported into the Community.

(28) On this basis, the average underselling margin amounts to 40,1 % when expressed as a percentage of the average Community frontier export price, duty unpaid.

(29) Since the margin of dumping established is greater than the injury elimination level definitively determined, the rate of definitive duty to be imposed should correspond to the lower injury margin, namely 40,1 %.

J. COLLECTION OF THE PROVISIONAL DUTY

(30) In view of the dumping margin found as well as the injury caused thereby to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty should be definitively collected at the rate definitively imposed.

K. UNDERTAKING

(a) Offer of undertaking

(31) The Russian authorities, in conjunction with the Russian exporters, offered an undertaking.

(32) In substance, the Russian authorities proposed to operate an export licensing system for the duration of the undertaking in order to ensure that all imports into the Community covered by the proposed undertaking should be of Russian origin, be produced by the Russian producers concerned and be exported and invoiced directly by the three exporters concerned to buyers in the Community. They further proposed to ensure that the total Russian exports by the three exporters in question would not exceed an overall annual quantitative ceiling. Any intended exports of the product by the exporters subject to the undertaking from the territory of Russia to the Community which did not meet the above criteria would not receive an export licence.

(33) In addition, the three exporters in question proposed to enter such an undertaking together, thereby ensuring that their exports of the product concerned would be made within the limits of the abovementioned ceiling. Furthermore, they would follow price levels prevailing in the Community market and set sales conditions for the product, taking into account any quality and other differences, which reflect normal competitive conditions.

(b) Merits

(34) An undertaking combining a quantitative limitation and a pricing commitment would facilitate effective monitoring of the product in question. The quantitative limitation offered represents a substantial reduction in the quantities exported during the investigation period. It is therefore considered that the terms of the undertaking are such that the injury caused to the Community industry would be eliminated.

(35) It is also to be recalled that the product in question is an ECSC product. According to the Agreement between the European Coal and Steel Community and the Russian Federation on trade in certain steel products, approved by Commission Decision 96/8/ECSC [1], Russia has agreed to establish and maintain quantitative limits on exports to the Community of certain steel products. Despite the fact that the product subject to the current investigation has been excluded from the Agreement in question due to the anti-dumping investigation in progress, past experience has shown that measures consisting of quantitative restrictions may provide a satisfactory solution for the type of product in question.

(c) Conclusion

(36) Taking into account the particular characteristics of the imports under consideration, when sold on the Community market, the Commission has come to the conclusion that the undertaking offered would remove the injury caused by dumping and would be an appropriate remedy in the present case. On this basis, the Commission is of the opinion that the undertaking offered, which could be effectively monitored, is acceptable. A residual duty at the rate indicated in recital (29) should nevertheless be imposed on imports of the product in question originating in Russia in order to underpin the undertaking by avoiding its circumvention,

HAS ADOPTED THIS DECISION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of grain oriented cold-rolled sheets and strips of silicon-electrical steel with a width or more than 500 mm originating in Russia and falling within CN codes 7225 11 00 (sheets of a width of 600 mm or more) and 7226 11 10 (sheets of a width or more than 500 mm but less than 600 mm).

[1] OJ No L 5, 8. 1. 1996, p. 24.

2. The rate of the definitive anti-dumping duty shall be 40,1 % of the net, free-at-Community frontier price, before duty (Taric additional code: 8877).

3. Unless otherwise specified, the provisions in force concerning customs duty shall apply.

Article 2

Notwithstanding Article 1, the duty shall not apply to imports of the products concerned exported and invoiced direct to buyers in the Community by the following companies, in respect of which an undertaking is hereby accepted:

	Taric additional code
— Novolipetsk Iron and Steel Corp. (NLMK), Lipetsk	8878
— Verh-Isetsky Metallurgical Plant, Ekaterinburg	8878
— VO 'Promsyrioimport', Moscow	8878.

Article 3

The amounts secured by way of the provisional anti-dumping duty pursuant to Decision No 2450/95/ECSC shall be definitively collected at the rate of duty definitively imposed.

Article 4

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Communities.*

This Decision shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 February 1996.

For the Commission

Leon BRITTAN

Vice-President