COMMISSION DECISION No 2297/92/ECSC

of 31 July 1992

amending Decision No 2131/88/ECSC, accepting undertakings offered in connection with imports of certain sheets and plates, of iron or steel, originating in the Republic of Slovenia and the Yugoslav republics of Macedonia, Montenegro and Serbia, and terminating the anti-dumping proceeding with regard to the Republic of Croatia and the Republic of Bosnia-Herzegovina

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 9 and 14 thereof,

After consultation within the Advisory Committee as provided for by the above Decision,

Whereas :

A. PREVIOUS PROCEDURE

(1) In February 1986, the Commission initiated an anti-dumping proceeding concerning imports of certain sheets and plates, of iron or steel, originating in Yugoslavia [2].

(2) By Commission Decision No 2767/86/ECSC [3], a provisional anti-dumping duty was imposed on the products subject to the proceeding, originating in Yugoslavia.

(3) In December 1986 the Commission, by Decision No 86/639/ECSC [4], accepted an undertaking offered by the Yugoslav exporters concerned. This undertaking was designed to eliminate the injury caused by the dumped imports.

(4) In June 1987, the Commission received complaints from the Community industry and the Italian Government that Yugoslav imports of sheets and plates were again causing material injury to the Community industry.

(5) Based on the evidence submitted, the Commission concluded that the undertaking had been infringed. Consequently, the Commission, by Decision No 229/88/ECSC [5], as amended by Decision No 980/88/ECSC [6], reimposed a provisional anti-dumping duty on the products concerned. At the request of the Yugoslav exporters, the Commission, by Decision No 1321/88/ECSC [7], extended the validity of the provisional duty for a further period of two months and finally imposed a definitive anti-dumping duty by Decision No 2131/88/ECSC [8].

B. REVIEW

(6) In January and February 1990 the Commission received requests for review with regard to the anti-dumping measures applicable to imports of the products in question originating in Mexico and Yugoslavia. The requests were lodged by Sidermex SA de CV, a Mexican exporter involved in the proceeding and by the Yugoslav Iron and Steel Federation, pursuant to Article 14 of Decision No 2424/88/ECSC.

(7) The requests alleged that following the imposition of the definitive anti-dumping duties the circumstances with regard to the situation of the exports to the Community market of sheets and plates, of iron or steel, have changed and that a review of the anti-dumping measures in force was warranted.

(8) The Commission considered that the evidence submitted concerning the changed circumstances was sufficient to justify the need for a review and accordingly announced, by a notice published in the *Official Journal of the European Communities* [9], the reopening of the investigation concerning imports of certain sheets and plates, of iron or steel, originating in Mexico and Yugoslavia.

[1] OJ No L 209, 2. 8. 1988, p. 18, as corrected in OJ No L 273, 5. 10. 1988, p. 19.
[2] OJ No C 38, 19. 2. 1986, p. 3.
[3] OJ No L 254, 6. 9. 1986, p. 18.
[4] OJ No L 371, 31. 12. 1986, p. 84.
[5] OJ No L 23, 28. 1. 1988, p. 13.
[6] OJ No L 98, 15. 4. 1988, p. 33.
[7] OJ No L 123, 17. 5. 1988, p. 20.
[8] OJ No L 188, 19. 7. 1988, p. 14.
[9] OJ No C 118, 12. 5. 1990, p. 3.

(9) Subsequently, however, given that the definitive duties were the subject of two separate decisions, it was considered appropriate that the Commission's conclusions in the review proceeding be also dealt with in separate Decisions. Since the review proceeding with regard to Mexico was terminated by Commission Decision No 322/92/ECSC (1), the present investigation concerns the new political entities which have emerged from the former Socialist Federal Republic of Yugoslavia.

(10) The Commission offically advised the producers/exporters and importers known to the Commission to be concerned, the representatives of the exporting countries and the complainants of the reopening of the investigation and gave the parties concerned the opportunity to make known their views in writing and to request a hearing.

(11) Most of the Community producers and all exporters concerned made known their views in writing. Some of them requested and were granted hearings.

(12) No submissions were made by or on behalf of Community purchasers or processors of the sheets and plates, of iron or steel, in question.

(13) The Commission sought and verified all the information it deemed necessary for the purpose of its determination and carried out investigations at the premises of the following companies:

Community producers:

— Dillinger Hüttenwerk, Dillingen, Germany,
— Thyssen Stahl AG, Duisburg, Germany,
— Stahlwerke Peine-Salzgitter AG, Salzgitter, Germany,
— ILVA SpA, Genoa, Italy,
— Cockerill Sombre SA, Seraing, Belgium,
— Forges de Clabecq SA, Tubize (Clabecq), Belgium,
— Sidmar NV, Gent, Belgium,
— British Steel plc, London, United Kingdom.

(14) The investigation of dumping covered the period from 1 January to 31 December 1989.

(15) Due to the complexity of the proceeding, in particular the difficulties met by the Commission under the prevailing political conditions in the countries concerned in obtaining from some of the interested parties the relevant data, the investigation exceeded the normal period of one year laid down in Article 7 (9) of Decision No 2424/88/ECSC.

C. PRODUCTS

(16) The products concerned are the same as those in the original proceeding i.e. certain flat-folled products, of iron or non-alloy steel, of a width exceeding 500 mm, of a thickness of 3 mm or more, not in coils, not further worked than hot-rolled, containing by weight less than 0,6 % of carbon, falling within CN codes: ex 7208 32 10, ex 7208 32 30, ex 7208 32 51, ex 7208 32 59, ex 7208 32 91, ex 7208 32 99, ex 7208 33 10, ex 7208 33 91, ex 7208 33 99, ex 7208 34 10, ex 7208 34 90, ex 7208 42 10, ex 7208 42 30, ex 7208 42 51, ex 7208 42 59, ex 7208 42 91, ex 7208 42 99, ex 7208 43 10, ex 7208 43 91, ex 7208 43 99, ex 7208 44 10, ex 7208 44 90, ex 7211 12 10, ex 7211 19 10, ex 7211 22 10 and ex 7211 29 10.

D. RESULTS OF THE REOPENED INVESTIGATION

(a) Preliminary observation

(17) In accordance with the review request filed by the exporters concerned, the investigation reopened by the Commission had to assess whether circumstances since the imposition of definitive anti-dumping duties had changed to the extent justifying the amendment, repeal of annulment of the anti-dumping measures introduced by the Commission. Within the framework of the present review the Commission therefore examined whether there are changed circumstances independent of the imposition of anti-dumping measures which warrant the revision of the said measures in force.

(b) Normal value

(18) The information submitted by the producers/exporters concerned with regard to domestic sales and production costs of the products in question was incomplete and not sufficiently documented. In the absence of a reliable basis for price comparison, the Commission could also not assess whether exports to third countries had been dumped. As apparently no other method to determine normal value could produce a different result, the Commission decided to determine normal value in accordance with Article 2 (6) (b) of Decision No 2424/88/ECSC on the import basis prices published by the Commission for the products in question, as they applied during the investigation period.

(c) Export prices

(19) Export prices were determined on the basis of prices actually paid or payable for hot-rolled sheets and plates sold for export to the Community for which evidence concerning relevant invoices was supplied.

(1) OJ No L 35, 12. 2. 1992, p. 9.

(d) Comparison

(20) Export prices have been adjusted, where appropriate evidence was available, for transport, insurance, handling and anciliary costs. All comparisons were made at the level cif Community frontier, duty unpaid.

(e) Dumping margin

(21) The examination of the facts shows further existence of dumping for the countries concerned. The margins of dumping being equal to the amount by which the normal values as established exceed the prices for export to the Community. The weighted average dumping margin amounts to 14,4 % of the net free-at-Community-frontier price before duty. This margin is lower than the margin found in the original proceeding and its reduced amount is independent of the measures in force.

(f) Level of injury

(22) The Commission has considered whether the prices at which the dumped imports from countries concerned were sold to the Community undercut the prices of Community producers during the investigation period. The weighted average export prices of the producers concerned (cif Community frontier, including anti-dumping duty of ECU 48 per tonne and handling costs) have been compared to the weighted average net sales prices of Community producers on the domestic market in commercial quality. On this basis the Commission found that prices of Community producers continued to be undercut by the imports in question despite the anti-dumping duty in force, the weighted average margin of price undercutting being 17,5 %.

(g) Conclusion

(23) Taking into account the continued dumping and price undercutting despite anti-dumping measures in force, the Commission concludes that the present circumstances do not justify the repeal of the measures but call for an amendment in accordance with the decrease of the dumping margin found given that the level of the remaining price undercutting exceeds the dumping margin.

E. COMMUNITY INTEREST

(24) In assessing whether protective measures against the countries concerned are in the interest of the Community, the Commission had to take into consideration that steel production is a key industry in the Community which went through a severe crisis in the last decade and is continuing the implementation of restructuring plans. Employment in the Community steel industry which fell from about 600 000 people in 1980 to 425 000 in 1985 and to 385 000 in 1990 is expected to be further eroded by the effects of restructuring. The Community steel indusy is undertaking further restructuring efforts in order to adapt capacities to demand prospects, to modernize equipment and to rationalize production processes. This can achieved be only if fair trading conditions are established in the market.

(25) In the light of this situation, the Commission considers that it is in the Community's interest to maintain protective measures concerning the countries in question thus contributing to the maintenance of a viable and healthy steel industry in the Community.

(26) No submissions were made by purchasers or processors that it would be against the Community interest to keep the anti-dumping measures in force. It is also considered that the maintenance of the protective measures will continue to have a limited effect on the costs of processing the final product. In any event, Community processors cannot expect to benefit from price advantages resulting from unfair competition.

F. PROTECTIVE MEASURES

(27) As a result of the above findings, the anti-dumping duty should be retained in an amended form. Since price undercutting was higher than the dumping, a duty deemed sufficient to eliminate the dumping margins determined should be imposed and expressed as an amount in ECU per tonne. This form of duty seems more appropriate in the light of the specific circumstances of the market for the relevant products in order to ensure the effectiveness of the measures and to prevent circumvention. Taking account of the reduced dumping margin, the Commission calculated the amount of the duty necessary to eliminate the dumping margin at ECU 44,00 per tonne to be paid on each tonne of hot-rolled sheets and plates originating in the Republic of Slovenia and the Yugoslav republics of Macedonia, Montenegro and Serbia and imported into the Community.

(28) Since the investigation concerns a review of existing measures, it has been decided to proceed directly to the amendment of the Decision imposing a definitive anti-dumping duty without recourse to a provisional stage. The Commission, before making its proposal in this case, informed the parties directly concerned and known to the Commission of the essential facts and considerations on the basis of which it was intended to recommend the amendment of the definitive duty and gave them ample time to comment.

G. UNDERTAKINGS

(29) Having been informed of the essential facts and considerations on the basis of which it was intended to maintain protective measures, all the producers/exporters concerned offered undertakings concerning their exports of certain sheets and plates, of iron or steel, to the Community.

(30) The Commission considers the terms and conditions of these undertakings as sufficient to eliminate the injurious effects of the exports in question and to bring a certain stability to the Community market of sheets and plates while allowing the producers/exporters concerned to maintain a share of the Community market. It appears furthermore that correct operation of the undertakings can be effectively monitored.

Moreover the Commission notes that in case of infringement of these undertakings it can impose immediate provisinal duties pursuant to Article 10 (6) of Decision No 2424/88/ECSC and subsequently definitive duties based on the facts established in the present investigation and without carrying out new investigations concerning dumping and injury resulting therefrom.

The Commission therefore, after consultation, considers that the undertakings offered by the producers/exporters in question are acceptable and that the investigation against these companies may be terminated without imposition of definitive duties.

H. DUTY

(31) For the companies which did not cooperate or otherwise be themselves known to the Commission, the findings were based on the facts available in accordance with Article 7 (7) (b) of Decision No 2424/88/ECSC. The Commission is of the opinion that the most appropriate facts are those established during the investigation and that in order to prevent circumvention, a definitive duty of ECU 44 per tonne as indicated in recital 27 should be imposed on imports of the products in question originating in the Republic of Slovenia and the Yugoslav republics of Macedonia, Montenegro and Serbia realized by companies other than those which have offered undertakings.

(32) Article 1 of Decision No 2131/88/ECSC relating to the rate of definitive duty should be amended accordingly.

(33) The complainant was informed of the facts and principal considerations on the basis of which the Commission intends to conclude the review proceeding.

I. TERMINATION

(34) The investigation carried out by the Commission revealed that the products concerned are not produced and exported to the Community by the Republic of Croatia and the Republic of Bosnia-Herzegovina. It is therefore considered that the proceeding concerning these countries may be terminated without imposition of defensive measures,

HAS ADOPTED THIS DECISION:

Article 1

Article 1 of Decision No 2131/88/ECSC is hereby replaced by the following:

'Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of certain flat-rolled products, of iron or non-alloy steel, of a width exceeding 500 mm, of a thickness of 3 mm or more, not in coils, not further worked than hot-rolled, containing by weight less than 0,6 % of carbon, falling within CN codes:

ex 7208 32 10, ex 7208 32 30, ex 7208 32 51, ex 7208 32 59, ex 7208 32 91, ex 7208 32 99, ex 7208 33 10, ex 7208 33 91, ex 7208 33 99, ex 7208 34 10, ex 7208 34 90, ex 7208 42 10, ex 7208 42 30, ex 7208 42 51, ex 7208 42 59, ex 7208 42 91, ex 7208 42 99, ex 7208 43 10, ex 7208 43 91, ex 7208 43 99, ex 7208 44 10, ex 7208 44 90, ex 7211 12 10, ex 7211 19 10, ex 7211 22 10 and ex 7211 29 10. originating in the Republic of Slovenia (Taric additional code : 8684) and the Yugoslav republics of Macedonia (Taric additional code : 8683), Montenegro (Taric additional code : 8682) and Serbia (Taric additional code : 8681).

2. The amount of the duty shall be ECU 44 per 1 000 kilograms.

3. Notwithstanding paragraph 1, the duty shall not apply for the products concerned:

— produced by Zelezarna Jesenice, Jesenice, (Taric additional code : 8680),

— produced by Rudnici i Zelezarnica Skopje, Skopje, (Taric additional code : 8679),

— produced by Metalurski Kombinat Smederevo, Smederevo, (Taric additional code : 8678).

4. The undertakings offered by the companies referred to in paragraph 3 are hereby accepted and the investigation with regard to these companies is terminated.

5. The provisions in force concerning customs duties shall apply.'

Article 2

The proceeding concerning imports of certain sheets and plates, of iron or steel, originating in the Republic of Croatia and the Republic of Bosnia-Herzegovina is hereby terminated.

Article 3

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, 31 July 1992.

For the Commission

Frans ANDRIESSEN

Vice-President