COMMISSION DECISION No 1836/81/ECSC

of 3 July 1981

on the obligation of distributive undertakings to publish price-lists and conditions of sale and on practices prohibited for these undertakings

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular the first and second paragraphs of Article 95 thereof,

Whereas Commission recommendation No 1835/81/ECSC [1] has obliged the Member States to take all measures necessary to ensure that the undertakings engaged in distribution activities in the steel sector observe rules governing prices and conditions of sale similar to those that apply to the production undertakings pursuant to Article 60 of the Treaty and its implementing decisions;

Whereas giving effect to this recommendation makes it necessary for certain Member States to implement legislative procedures and other measures which require a certain amount of time to complete;

Whereas the steel market continues to be seriously affected by the deterioration of the economic situation; whereas, in order to create economic conditions favourable to the indispensable restructuring of the iron and steel industry, immediate action with regard to the sales prices of steel is absolutely necessary; whereas urgent implementation of such action is becoming increasingly essential in this period of crisis;

Whereas in mid-1981, notwithstanding a certain improvement, the sales prices of iron and steel products remain at levels which are insufficient to guarantee the future for undertakings, even in the case of modern installations, and, under these conditions, it is indispensable to implement a very short-term action for rationalization of the steel market in such a way as to bring about the rise in prices necessary to prevent financial disaster;

Whereas the steel market constitutes a whole in which dealers play an important role, in view of the fact that more than half of the steel marketed in the Community, either in direct sales or ex-stock, including material imported from non-Community countries, passes through their hands and, under these conditions, any action intended to affect prices must involve not only producers, but also dealers;

Whereas, in consequence, a Commission Decision imposing direct and immediate obligations on distribution undertakings appears necessary in order to attain, within the common market in coal and steel, the objectives of the Treaty as set out in particular in Article 3; whereas the Treaty makes no provision for this case and it is thus necessary to apply the provisions set out in the first paragraph of Article 95;

Whereas, in order to ensure that the obligations resulting from this Decision are fulfilled, it is necessary to make provision for checks and penalties and to require distribution undertakings, during the verification procedures, to present in particular commercial and accounting documents of the same type as those required from the producers pursuant to Commission Decision No 14/64 [2], the provisions of which are reiterated in a communication [3];

Whereas, because of the more complex nature of the problems posed for the establishment of price lists for special steel products, it is appropriate in this respect to give distributive undertakings additional time to comply with the dispositions of the present Decision;

After consulting the Advisory Committee and with the assent of the Council acting unanimously,

HAS ADOPTED THIS DECISION:

Article 1

1. This Decision shall be applicable to the 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:

[1] See page 9 of this Official Journal.

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

[3] See page 17 of this Official Journal.

— 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 Decision, 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.

Article 2

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 the Commission.

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

Article 3

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

(a) basic prices according to category of product 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, particularly 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 and 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 4

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 5

1. (a) The price lists and conditions of sale shall apply not earlier than two clear days after they have been addressed to the Commission.

(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 6

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 price at the place of destination 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 at the place of destination 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 at the place of destination 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 7

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 8

It shall be a prohibited practice for the steel dealer to apply in the common market dissimilar conditions (Article 10) to comparable transactions (Article 9).

Article 9

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 10

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 11

Steel dealers who allege that transactions are not comparable (Article 9) or that conditions are not to be considered dissimilar (Article 10) shall, at the request of the Commission, set out the facts and circumstances which may justify this.

Article 12

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. Where 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 Commission, 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 it has been imposed by the effective competition of the competitor outside the Community.

5. Steel dealers must comply with the prohibitions of alignment on quotations from non-Community countries which apply to Community undertakings by virtue of Commission Decision No 527/78/ECSC (1), as last amended by Decision No 1309/81/ECSC (2).

Article 13

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 14

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

For the purposes of such checks, steel dealers shall be obliged to keep, and make available to the agents or authorized representatives of the Commission carrying out the checks, business books and accounting documents including at least those set out in Article 1 (a) to (g) of Decision No 14/64.

Article 15

1. Steel dealers who infringe the provisions of Articles 2 to 13 inclusive shall be liable to fines not exceeding 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 the provisions of Article 14 shall be liable to fines not exceeding 1 % of the annual turnover and to penalty payments not exceeding 5 % of the average daily turnover for each day's delay.

Article 16

This Decision shall enter into force on the date of its publication in the *Official Journal of the European Communities* for ordinary steels and on 1 October 1981 for special steels as defined in Euronorm 20/74.

It shall apply until 30 June 1982.

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

Done at Brussels, 3 July 1981.

For the Commission

Étienne DAVIGNON

Vice-President

(1) OJ No L 73, 15. 3. 1978, p. 16.
(2) OJ No L 130, 16. 5. 1981, p. 19.