COMMISSION DECISION No 2450/95/ECSC

of 19 October 1995

imposing a provisional anti-dumping duty on imports into the Community of certain grain oriented electrical sheets originating in Russia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 Article 11 thereof,

After consulting the Advisory Committee,

Whereas :

A. PROCEDURE

(1) In May 1994, the Commission announced, by a notice published in the *Official Journal of the European Communities* [2], the initiation of an anti-dumping proceeding concerning imports into the Community of certain grain oriented electrical sheets originating in Russia, falling within CN codes 7225 10 91 and 7226 10 30.

(2) The proceeding was initiated as a result of a complaint lodged by Eurofer (European Federation of Iron and Steel Industries) on behalf of producers whose collective output allegedly constitutes the majority of Community production of the product in question. The complaint contained evidence of dumping of the product originating in Russia and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The Commission officially advised the producers, exporters and importers known to be concerned, representatives of the exporting country and the complainant, and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(4) The Commission received detailed written comments from the complainant Community producers and some of the Russian producers and exporters.

(5) No importer of the product concerned made its views known to the Commission within the time limit set in the notice of initiation. However, when the investigation reached an advanced stage, a company alleging that it was using the Russian products in question requested and was granted a hearing as set out in recital 42.

(6) The Commission sought and verified all information it considered to be necessary for the purposes of a preliminary determination of dumping and injury and carried out investigations at the premises of the following :

(a) Community producers :

— EBG Gesellschaft für Elektromagnetische Werkstoffe mbH, Germany,

— Orb Electrical Steels Ltd, (a subsidiary of British Steel Plc), United Kingdom,

— Ugine SA, France ;

(b) a producer in a third market-economy country :

— Acesita (Companhia Aços Especiais Itabira), São Paulo, Brazil.

(7) The investigation of dumping covered the period 1 January 1993 to 30 April 1994 ('the investigation period').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Description of the product concerned

(8) The product allegedly being dumped is grain oriented cold-rolled sheets and strips of silicon-electrical steel with a width of more than 500 mm, 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 to less than 600 mm), which are used for electromagnetic appliances and in installations such as power and distribution transformers. The product concerned is an ECSC product.

In the rather complex manufacturing process of grain oriented electrical sheet, grain structures are orientated uniformly in the direction of the rolling of the sheet or of the strip in order to allow it to

[1] OJ No L 209, 2. 8. 1988, p. 18.
[2] OJ No C 138, 20. 5. 1994, p. 8.

conduct a magnetic field with a high degree of efficiency. The product in question has to comply with specifications concerning highest admissible re-magnetization losses, magnetic induction and pile factor. In general, both sides of the product are covered with a thin isolating coating.

2. Like product

(9) It has been established, for the purpose of this investigation, that the products concerned produced in the Community, in Russia and in Brazil (Brazil having been chosen as the reference country : see recital 12) closely resemble each other in their physical characteristics and uses, and compete with each other. Accordingly, they are considered 'like products' within the meaning of Article 2 (12) of Decision No 2424/88/ECSC (hereinafter referred to as 'the basic Decision').

(10) The Russian companies, in their reply to the Commission's questionnaires, argued that some of their exports to the Community consisted of lower-grade material which was not comparable to the products produced and sold by the Community producers.

During the on-the-spot verifications, it has been observed that, owing to the complexity of the manufacturing process, all producers of the product in question manufacture certain quantities of grain oriented electrical sheets which have quality deficiencies and are therefore sold as second-choice material. However this material is generally used, after re-cutting, in applications similar to those of the first quality product, although sold at a discount.

It therefore has been determined that second-choice materials are like products which should, however, be subject to a price adjustment for differences in physical characteristics in accordance with article 2 (10) (a) of the basic Decision.

C. DUMPING

1. Normal value

(a) *Analogue country*

(11) Russia being a non-market economy country, the complainant initially proposed South Korea as a market economy reference coutnry (analogue country).

However, owing to the non-cooperation of the South Korean producer, an alternative analogue country had to be found. For that purpose, questionnaires were forwarded to all producers known to the Commission in Brazil, the Czech Republic, Japan and Poland. Only the Brazilian producer, Acesita (Companhia Aços Especiais Itabira) agreed to cooperate in the current investigation.

(12) In order to determine whether the Brazilian market could be considered an appropriate and not unreasonable choice for establishing the normal value of the product under consideration, it was noted that grain oriented electrical sheets were sold on the market concerned, on a regular basis, to a large number of independent customers in substantial quantities when compared to the volume exported by Russia to the Community and with a reasonable, but not excessive, profit. Furthermore, a significant part of domestic consumption in Brazil was supplied by imports which competed with domestic production.

Concerning production of the product in question, there is a large measure of similarity between the production processes and technologies in Brazil and in Russia.

With regard to access to raw materials, Brazil has, like Russia, very substantial resources of high quality iron ores, silicon and other raw materials necessary to manufacture the product in question in the vicinity of the plant, which can be efficiently exploited and are also exported world wide.

Furthermore, the Brazilian producer which has cooperated in the investigation owns an electric power station close to its plant which provides a large proportion of its energy requirements at very low cost.

On the basis of the above factors, it is therefore concluded that Brazil is an appropriate analogue country for determining normal value for the product under consideration, in particular as certain natural advantages with regard to convenient access to domestic raw material supplies and energy sources are rather similar in both countries.

(b) *Normal value*

(13) Normal value was, in accordance with Article 2 (3) of the basic Decision, calculated as the weighted average domestic selling price of the like product sold by Acesita for consumption on the Brazilian market. Domestic sales were found to be made in the ordinary course of trade to independent customers.

In order to correct for the effect of inflation in Brazil, normal value was established on a monthly basis.

2. Export price

(14) Since all export transactions were dumped, the export price has been calculated as the weighted average selling price actually paid or payable for all export transactions to the Community.

3. Comparison

(15) A comparison between the weighted average export price and the weighted average normal value in the analogue country, expressed in ecus on the basis of the appropriate exchange rate (monthly average for Brazil) has been made at the ex works level.

In order to take account of any differences affecting price comparability, adjustments have been granted with regard to physical characteristics and selling expenses, as provided for by Article 2 (9) and (10) of the basic Decision.

4. Dumping margin

(16) The comparison showed the existence of dumping. Since Russia is a non-market economy country, a single dumping margin, being the difference by which normal value exceeds the export price to the Community, has been determined. This margin expressed as a percentage of the fre-at-Community-frontier price, amounts to 73,46 %.

D. COMMUNITY INDUSTRY

(17) The Community industry consists of the three cooperating Community producers which represent cumulatively more than 70 % of the total Community production.

E. INJURY

1. Consumption

(18) Community consumption (based on questionnaire replies, Eurostat data and market information available to the Commission) has decreased in recent years from 11 272 tonnes per month in 1990 and 11 306 tonnes per month in 1991 to 10 682 tonnes per month in 1992 and 9 780 tonnes per month during the investigation period; this represents a fall of 13,2 % compared to 1990.

2. Dumped imports

(a) *Volume and market share*

(19) Total imports of the product concerned from Russia increased strongly from 924 tonnes in 1990 to 11 582 tonnes during the investigation period.

(20) The corresponding market share increased from 0,7 % in 1990 to 7,4 % during the same period.

(b) *Price undercutting*

(21) In order to assess the level of price undercutting, the average prices of the imports from Russia have been compared with the selling prices of the product sold by the complainant Community producers on the Community market. Adjustments have been applied to take account of differences in physical characteristics. In order to arrive at a comparable level of trade with the sales of the Community product, the Russian import prices have been adjusted by an importer's margin including customs clearance, handling, financing, storage, general and administrative expenses and profit (5 %). In the absence of any cooperation from importers of the product concerned, the importer's margin has been established on the basis of information available on the trading margin obtained on the importation of other steel products.

On this basis, the price undercutting expressed as a percentage of the Community producer's prices (at ex works level) varied from 16,5 to 28 % for prime quality material, and from zero to 9,8 % for second quality material.

3. Situation of the Community industry

(a) *Total production*

(22) Total production of the complainant Community producers decreased constantly, falling by 15,2 % between 1990 and the investigation period, from an average of 13 245 tonnes per month to an average of 11 231 tonnes per month.

(b) *Utilization of production capacity*

(23) In line with total production, the rate of capacity utilization decreased steadily, from an average of 64 to 54 % during the same period.

(c) *Volume of sales and market shares*

(24) Deliveries of complainant producers destined for the Community market decreased by 25,8 % between 1990 and the period of investigation, from an average of 7 843 tonnes per month to an average of 5 821 tonnes per month. The corresponding market share decreased from a level of 69,6 to 59,5 % during the same period, a loss of about 10 %, in line with the steadily increasing inflow of the dumped imports.

(d) *Prices*

(25) The weighted average selling price of complainant producers on the Community market decreased continuously between 1990 and the investigation period. The decrease amounted to 5 % despite rising costs of production over the same period.

(e) *Profitability*

(26) The decline in deliveries of the Community industry and the simultaneous price depression on the Community market resulted, on balance, in financial losses for the Community industry during the period of investigation, with a constant negative trend over the period.

(f) *Employment*

(27) Employment in the production of the product concerned decreased continuously during the period under consideration, falling by 11 % between 1990 and the investigation period.

4. Conclusion on injury

(28) On the basis of the above findings, particularly the decline in deliveries to the Community market and the resulting substantial loss of market share as well as the price depression, factors which together led to a decline in profits, and, on balance financial losses ; taking into consideration the reduction of employment, it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 4 (1) of the basic Decision.

F. CAUSATION

(29) The Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports from Russia and whether other factors such as the contraction of consumption and the volume and prices of imports from other sources might have caused or contributed to that injury.

1. Effect of dumped imports

(30) During the period under consideration, the dumped imports increased in volume terms by several hundred percent. Their market share rose by a factor of 9,5 to reach 7 %. This corresponds to the major part of the loss in market share incurred by the Community industry (10 %). The same parallelism exists as regards price changes : between 1990 and the investigation period, the dumped imports undercut consistently, and by a substantial margin, the Community industry's prices, which dropped by 5 % over the same period. In these circumstances, the Commission concludes that the dumped imports significantly contributed to the decline in the Community industry's position on the Community market.

2. Effect of other factors

(a) *Decrease in consumption*

(31) Between 1990 and the investigation period, consumption of grain oriented electrical sheets decreased by 13,2 %. However, the contraction of demand remained far less pronounced than the decrease in domestic sales by the complainant producers, which amounted to 25,8 % over the same period. The decreasing consumption cannot, therefore, explain the full extent of the losses suffered by the Community industry.

(b) *Other imports*

(32) Between 1990 and the investigation period, Russia became the largest exporter of grain oriented electrical sheets to the European Community, in absolute terms as well as in terms of market share. Its share of total imports amounted successively to 8,6 % in 1990, 17,4 % in 1991, 28,1 % in 1992 and 42,4 % during the investigation period.

(33) During the same period, the market share of imports from other third countries, taken together, rose from 7,3 % in 1990 to 10,1 % during the investigation period, an increase of 2,8 percentage points.

(34) However, in absolute terms, the volume of imports from those countries stagnated after 1991. Considered individually, no other third country increased its import volume or gained any significant market share between 1990 and the investigation period.

(35) With regard to prices of imports from other third countries, an examination of Eurostat data showed that cif Community frontier unit prices of imports

from Russia were far below the corresponding unit prices of any other exporting third country. Moreover, there was no evidence to suggest that those imports from other third countries had been dumped and had undercut the Community producers' prices.

(36) In summary, while it is true that the Community industry lost some market share to other exporting countries, the extent of such losses is far less significant than in the case of Russia and cannot be related to any injurious unfair trade practice on the part of those countries. Again, this factor cannot fully account for the injury suffered by the Community producers.

3. Conclusion

(37) The Commission, therefore, concludes that, notwithstanding the fact that other factors may also have negatively affected the Community industry's position, the dumped imports from Russia, taken in isolation, have caused material injury to the Community industry, within the meaning of Article 4 (1) of the basic Decision.

G. COMMUNITY INTEREST

1. With regard to Community producers

(38) In assessing Community interest, the Commission recalls that the very purpose of protective anti-dumping measures is to eliminate the trade-distorting effects of injurious dumping and to restore effective competition on the Community market. In the current proceeding, given that material injury has been caused to the complainant industry by the dumped imports, failure to take measures would aggravate the already precarious situation of the Community industry and could lead producers to abandon this segment of production.

(39) Moreover, in order to fund the levels of investment necessary to ensure the long-term competitive supply of quality products to their customers, Community producers must earn adequate profits. Without investment in product quality and new product development the competitiveness of the Community producers will suffer.

(40) As already stated above in recital 8, the manufacturing process of grain oriented electrical sheets is complex and is only profitable if a minimum scale of production is maintained. Between 1990 and the investigation period the Community industry has undergone significant restructuring, leading to an overall reduction in production. If production is futher substantially reduced, which is to be expected if the massive inflow of dumped products continues, the viability of the plants of the four remaining Community producers and their capacity to modernize and to follow technical progress would be seriously endangered.

(41) Indeed, in view of the inevitable increase in unit costs if sufficient capacity utilization is impeded, with a consequent lack of sufficient return to maintain investment and research, Community producers could be prevented from continuing to supply high-quality products at competitive prices.

2. With regard to end users

(42) The Commission did not receive any representation from industrial end users of the product concerned within the time limit specified in the opening notice.

However, when the investigation had reached an advanced stage, a company manufacturing electrical transformers requested a hearing, alleging that it was using the Russian products in question (see recital 5).

(43) This company argued that any imposition of measures in the form of an anti-dumping duty would increase its costs significantly. For outstanding offers (in particular in the framework of tenders) it would be impossible to pass such costs on to the final user, at the lead time between offer, order and delivery is often several months. Nevertheless, the company concerned did not supply any evidence in support of its allegation but, rather, limited its comments to estimates of the likely impact of duties.

(44) On the basis of the information available at this preliminary stage of the proceeding, the Commission is of the opinion that the imposition of anti-dumping measures on the Russian imports is unlikely to have a significant impact on the cost of production of electrical transformers as a variety of sources of supply are available to users of electrical sheets in the Community.

(45) The Commission further examined medium or long term consequences for users of grain oriented electrical sheets in the event that anti-dumping measures were not taken.

(46) If the Community industry ceases production of grain oriented electrical sheets, users of the product concerned would become progressively dependent on imported materials from other more distant, often less efficient and less reliable, sources of supply. The implications of such dependency would be widespread, as certain products which incorporate grain oriented electrical sheets, in particular electrical transformers, have a wide variety of uses in the generation, distribution and utilization of electrical power and in other high-tech electrical applications for industrial equipment.

(47) A further shrinkage in the number of Community suppliers of the product concerned could thus have serious implications for supplies to the electrotechnical industry and, further downstream, for the users of its products in sensitive areas like hospitals, defence, transport and infrastracture. This would adversely affect the competitiveness of the electrotechnical industry on the Community market. It is therefore vital that production of grain oriented electrical sheets be maintained in the Community and that producers can generate sufficient returns to enable them to continue investment and research and development in order to remain competitive.

(48) In the circumstances, even if the imposition of anti-dumping measures were to result in a certain price increase for the product under investigation, such an effect would be counterbalanced by the assurance of a continued supply of high quality products from sources within the Community.

3. Conclusion

(49) On the basis of the above facts and considerations, it is therefore provisionally found to be 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.

H. DUTY

(50) In the light of the above, measures shoud take the form of a provisional *ad valorem* duty. For the purpose of establishing the level of this duty, the Commission took account of the dumping margin established and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

1. Injury elimination level

(51) In assessing the injury elimination level, the Commission took account of the fact that dumped imports from Russia have significantly undercut Community producers' prices, causing substantial losses or erosion of profitability. Consequently, removal of injury would require that export prices of products concerned originating in Russia be increased to a sufficient degree to allow the Community industry to increase its average prices to a profitabe level.

(52) In order to achieve this, the Commission has established a target price for both prime and second-quality material.

(53) In respect of prime-quality material, the target price has been calculated by adding a profit of 5 % to the cost of production of the product concerned.

(54) With regard to second-quality products, it should be noted that this material has no specific cost of production, as it results from a flaw in the manufacturing process. Therefore, a target price of second choice has been calculated by applying to the target price of first choice the average rebate which was normally granted during the investigation period by the producer in the analogue country.

(55) In order to assess the level of price underselling, the average target prices for Community products have been compared with the corresponding average prices of the imports from Russia. For this purpose, prices have been duly adjusted as explained in recital 24.

(56) A weighted average margin of price underselling expressed as a percentage of the Russian export price, at cif Community frontier level, has been calculated. This margin amounts to 43,2 %.

2. Duty level

(57) In accordance with Article 13 (3) of the basic Decision, as the injury elimination level as established above is below the dumping margin (recital 16), the anti-dumping duty calculated on the basis of the free-at-Community-frontier price should amount to 43,2 %.

I. FINAL PROVISION

(58) In the interest of sound administration, a period should be fixed within which the parties known to be concerned may make their views known and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Decision are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may impose,

HAS ADOPTED THIS DECISION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of grain oriented cold-rolled sheets and strips of silicon-electrical steel with a width of more than 500 mm 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 to less than 600 mm).

2. The rate of the provisional anti-dumping duty shall be 43,2 % of the net, free-at-Community-frontier price, before duty.

3. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Decision No 2424/88/ECSC, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Decision.

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, 19 October 1995.

For the Commission

Leon BRITTAN

Vice-President