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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 June 1991

accepting undertakings given in connection with the anti-dumping proceeding concerning imports of certain asbestos cement pipes originating in Turkey, and terminating the investigation

(91/392/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Article 10 thereof,

Having regard to Article 47 of the Additional Protocol to the EEC-Turkey Association Agreement⁽²⁾,

After consultations within the Advisory Committee as provided for in the above Regulation,

Whereas :

A. PROCEDURE

(1) In December 1989 the Commission received a complaint lodged by the Association of the Italian asbestos cement pipes producers (Uniontubi) on behalf of the producers representing the whole production in Italy of this product. The complaint contained evidence of dumping of the product concerned originating in Turkey and of injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice

published in the *Official Journal of the European Communities*⁽³⁾, the initiation of an anti-dumping proceeding concerning imports of certain asbestos cement pipes falling within CN code ex 6811 30 00 originating in Turkey and subsequently commenced an investigation.

(2) The Commission officially so advised the exporter and importer known to be concerned, the representatives of the exporting country and the complainant Italian producers and gave the parties concerned the opportunity to answer the questionnaires addressed to them, to make known their views in writing and to request a hearing.

(3) The Italian producers, the exporter and the importer returned the questionnaires to the Commission duly completed. The exporter made its views known in writing. The complainant and the exporter requested and were granted hearings.

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

Community producers :

- Fibronit SRL — Italy,
- Tecnotubi SPA — Italy,
- Nuova Sacelit SPA — Italy.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No L 293, 29. 12. 1972, p. 3.

⁽³⁾ OJ No C 63, 13. 3. 1990, p. 4.

Exporter:

— Elyafli cemento sanayi ve ticaret AS — Turkey.

Importer:

— Società del gres ing. sala SPA — Italy.

- (5) The investigation of dumping covered the period from 1 March 1989 to 28 February 1990 (investigation period).

B. COMMUNITY INDUSTRY

- (6) The Italian producers on behalf of which the complaint was lodged sold almost all of their production of the products in question in Italy. The demand in Italy for these products was not to any substantial degree supplied by producers located elsewhere in the Community. In addition, imports into the Community of the products concerned originating in Turkey allegedly being dumped and causing injury were concentrated on the Italian market.

Given the above exceptional circumstances, pursuant to Article 4 (5) of Regulation (EEC) No 2423/88, the Community is, for the production in question, divided into two different competitive markets which are the domestic Italian market and the extra-Italy Community market. Consequently, the producers within each of these two markets are regarded as a Community industry.

Therefore, the Community industry allegedly being injured refers to that represented by the Italian market which is the only one concerned by this proceeding.

C. PRODUCT UNDER CONSIDERATION**(i) Description of the product**

- (7) The products which are the subject of the investigation are asbestos cement pipes and were imported under two categories, sewer pipes for sewerage and pressure pipes of a kind used for drinking water and irrigation, with joints and rubber rings. Within each of these two categories, there is a wide range of product types depending on the class and diameter of the pipe. These differences are outweighed by the fact that all pipes have the same basic physical characteristics. All types are manufactured using the same technology and on the same equipment. Raw materials used for all types are identical. Therefore, all pipes can be considered as one single product for the purpose of this proceeding.

(ii) Like product

- (8) The Commission verified that the pipes produced in Italy use the same basic technology as those exported from Turkey and are alike in their essential physical and technical characteristics as well as in their uses.

D. DUMPING**(i) Normal Value**

- (9) In all cases, normal value was determined on a monthly basis to take account of the high inflation rate in Turkey. Of the two categories of pipe imported into Italy, sewer and pressure pipes, only the latter was sold on the domestic market of the exporting country during the investigation period. As a result, normal value was established on a different basis for each of the two categories of the product concerned.
- (10) With regard to pressure pipes, normal value was generally established on the basis of the weighted average domestic prices of comparable product types sold in sufficient quantities for each month of the investigation period and in the ordinary course of trade. These domestic prices were net of all discounts and rebates actually granted where were found to be directly linked to the sales under consideration.
- (11) For all sewer pipes which, as indicated, were not sold in the Turkish market during the investigation period, as well as for certain types of pressure pipes exported in a particular month but not domestically sold in that month, normal value was established on the basis of the constructed value, i.e. cost of production plus a reasonable profit margin.

Different monthly constructed normal values were determined for each category of pipe. This was done by adding to the cost of production, on the basis of all costs, a reasonable amount for selling, administrative and general expenses and profit calculated by reference to the expenses incurred and the profit realized by the Turkish exporter concerned on sales of pressure pipes on its domestic market.

(ii) Export prices

- (12) Export prices were determined on the basis of the prices actually paid or payable for the products sold for export to Italy.

On this basis, export prices were established for representative product types and transactions covering nearly 80 % of total sales made to the independent customer in Italy during the investigation period.

(iii) Comparison

- (13) The monthly normal values per product type were compared with export prices for the corresponding type on a transaction-by-transaction basis. All comparisons were made at ex-works level.

For the purpose of a fair comparison between normal values and export prices, account was taken where appropriate of differences affecting price comparability, such as differences in import charges and in selling expenses resulting from sales made under different conditions and terms of sale, where claims of a direct relationship between these differences and the sales under consideration could be satisfactorily demonstrated. Accordingly, adjustments were made for differences in import charges borne by materials physically incorporated in the like product when destined for consumption in Turkey and not collected in respect of the product exported to Italy. Allowance was also made for differences in transport, insurance, handling, loading and ancillary costs, payment terms, warranty expenses and technical assistance expenses.

(iv) Dumping margins

- (14) This comparison revealed the existence of dumping in respect of imports into Italy of certain asbestos cement pipes originating in Turkey on the part of the only Turkish exporter concerned, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to Italy.

The margins of dumping varied according to the product type, and expressed as a percentage of the free-at-Italian-border export prices, on a weighted average basis during the investigation period amounted to 5,12 %.

E. INJURY

- (15) The evidence available to the Commission shows that imports into Italy of certain asbestos cement pipes originating in Turkey, which were not present on the Italian market in 1986 and 1987, increased from 3 300 tonnes in the period from March 1988 to February 1989 to 7 300 tonnes during the investigation period (March 1989 to February 1990). The development of these imports, assessed in the light of that on the Italian consumption over the same periods, led to an

8,1 % share of the Italian market held by imports from Turkey during the investigation period.

- (16) Resale prices into Italy of the imported product from Turkey were significantly below the average prices practised by the Italian producers during the investigation period. The Commission established price undercutting by comparing, at the same level of trade (CIF delivered to Italian customer), resale prices into Italy of the imported product with prices charged by Italian producers for similar representative product types. The margins of undercutting found varied, depending on the product type, up to a maximum of 15,3 % and amounted on a weighted average basis to 8,7 %.
- (17) The low level of import prices forced the Italian producers to sell the product on the Italian market at prices which either did not allow, in some cases, a reasonable profit to be made, or, in most cases, did not cover the Italian producers' costs of production. The prices of these imports not only denied the Italian producers price increases which normally would have occurred during 1988 and 1989 to keep in line with the evolution of costs of production, but obliged the Italian producers to decrease their prices since the end of 1988 in an attempt to maintain their market shares.
- (18) As far as the situation of the Italian industry is concerned, account had to be taken of the following factors :

- (a) although production and domestic sales of the product concerned by the Italian producers increased respectively by 21 % and 24,2 % during the investigation period when compared to the previous 12 months, these increases have to be measured against a growth in Italian consumption of 31 % over the same period. As a result, the share of the Italian market held by the Italian producers declined from 81,7 % in the period from March 1988 to February 1989 to 77,6 % during the investigation period ;

- (b) the presence on the Italian market of the low-priced imports concerned prevented the Italian producers from taking greater advantage of the increase in consumption and, therefore, to improve the rate of capacity utilization which, during the investigation period reached, on average, the very low level of 54 %. The combined by these imports on the Italian industry has been a general decrease in profitability in 1988, a decrease in market share in 1989 and losses suffered by all Italian producers in the same year.

- (19) On the basis of the relevant economic factors referred to above, it appears that the situation of the Italian industry has been adversely affected. This is especially demonstrated by a loss of market share and profitability. In these circumstances, it is concluded that the Italian industry has been suffering material injury.

F. CAUSATION OF INJURY

- (20) As far as the causal link between the dumped imports and the material injury is concerned, the Commission found that there is a clear parallelism and simultaneity between the increase in the volume of dumped imports from Turkey and the deterioration of the financial situation of the Italian producers. The arrival and rapid penetration of the low-priced Turkish exports to the Italian market also corresponds with the decrease in the market presence of the Italian producers.
- (21) The Commission has examined whether the injury suffered by the Italian industry has been caused by factors other than the dumped imports such as imports from other countries or the low capacity utilization prevailing in the Italian market during the last years.
- (22) It was found that the market share of imports into Italy from other third countries decreased from 17,3 % in the period from March 1987 to February 1988 to 11,6 % in the following 12 months and to 8,8 % during the investigation period. This substantial decline in market share leads the Commission to consider that imports from other third countries did not have any injurious effect on the Italian industry. Moreover, there has been no indication that these imports have been made at dumped prices.
- (23) Imports into Italy originating in other Community countries led to market shares increasing from 1,4 % in the period from March 1987 to February 1988 to 1,9 % in the following 12 months and reached 5,5 % during the investigation period. However, it was found that these imports have been made at prices higher than those charged by the Italian producers and were concentrated in certain segments of the Italian market. Therefore, they are not likely to explain the Italian producers' price erosion and loss of market share and profitability.
- (24) The substantial overcapacity shown by most of the Italian producers during the last years existed already before imports from Turkey first entered the Italian market. In that sense the precarious

financial situation of the Italian industry may also have been influenced by the low capacity utilization which characterized the Italian industry in that period. However, it clearly appears that the presence of the dumped imports prevented the Italian producers from further increases in production and sales and thus from higher utilization of capacity which would have occurred had greater advantage of the increase in Italian consumption since 1987 been taken.

- (25) Consideration was also given to the effect on the Italian industry in recent years of environmental problems posed by products containing asbestos which are being progressively replaced by alternative products. However, the Commission has concluded that this situation mainly represents a threat to the future of the production of asbestos cement pipes insofar as some of their uses are concerned and did not significantly affect the injurious impact of the dumped imports originating in Turkey.
- (26) In view of the increase in the Italian market share held by the dumped imports originating in Turkey and their adverse effect on the situation of the Italian producers, the Commission concludes that these imports, taken in isolation, caused material injury to the Italian industry. As already indicated, this conclusion does not imply that all ascertained difficulties of the Italian industry should necessarily be imputed to this cause, rather than to overcapacity of most of the Italian producers or to environmental disadvantages of the product concerned. However, according to Article 4 of Regulation (EEC) No 2423/88, it is possible to attribute to the exporter concerned responsibility for the injury caused by dumping even if this injury is merely apart of more extensive injury attributable to other factors. Article 4 only required that other possible causal factors of injury should not be ascribed to the dumped imports.

G. COMMUNITY INTEREST

- (27) In assessing whether it is in the interest of the Community to take measures against the dumped imports, the Commission has noted that one of the Italian producers ceased to exist at the end of 1989, the financial situation of the remaining producers in Italy is strongly deteriorating and the Italian market has been rapidly penetrated by the imports concerned. Should this trend continue, it could lead to a further worsening of the situation of the Italian industry concerned so impeding its ongoing restructuring and thus putting its survival at risk.

The Commission concludes that it is therefore in the interest of the Community to take measures in order to eliminate the injurious effects on the Italian producers of the dumped imports concerned.

H. PROTECTIVE MEASURES

- (28) The Commission considers, as discussed in recital 26 above, that it is inappropriate to impute the totality of the ascertained injury suffered by the Italian producers to dumped Turkish imports. These imports have, of course, affected indicators such as the price erosion and the losses incurred by the Italian industry in 1989, but the interpretation — and above all the quantification — of this effect is imprecise, owing to the presence of other factors operating at the same time and especially to the overcapacity shown by the majority of the Italian producers.
- (29) In order to avoid this difficulty, the Commission considers that injury should only be measured in terms of the price undercutting found for the prices of the imported product. When this undercutting, which is determined at a resale price level in recital 16 above, is expressed at the cif Italian border level, a weighted average margin of 9,35 % is arrived at. This individual threshold thus found represents the price increase at the Italian border necessary to remove the injury defined in terms of undercutting.

However, since the dumping margin established in this proceeding is lower than the injury threshold of 9,35 % it is considered appropriate, so as to eliminate as far as possible the injurious effect of the dumped imports, that the protective measures to be taken correspond to the dumping margin found.

I. PRICE UNDERTAKING

- (30) The Turkish exporter concerned was informed of the essential facts and considerations on the basis of which it was intended to take protective measures. Since the Community industry has been interpreted in this proceeding as referring to the producers in Italy only, the exporter in Turkey was given the opportunity to offer a price undertaking in respect of the Italian market in accordance with Article 13 (6) of Regulation (EEC) No 2423/88. Taking such opportunity the exporter concerned has offered a price undertaking which the Commission regards as acceptable, considering that the effect of this undertaking will be to increase the

prices of the product concerned to an extent sufficient to eliminate the margin of dumping found. In addition, it appears that correct operation of the undertaking can be effectively monitored.

Moreover, the Commission notes that in case of violation of this price undertaking it can impose a provisional duty in respect of the Community as a whole, and the Council a subsequent definitive duty based on the facts established in the present investigation and without carrying out new investigations concerning dumping and injury resulting therefrom.

- (31) Objections to this course were raised in the Advisory Committee by one Member State. Therefore, in conformity with the provisions of Articles 9 (1) and 10 (1) of Regulation (EEC) No 2423/88, the Commission submitted to the Council a report on the results of the consultation, together with a proposal that the undertakings be accepted and the investigation be terminated. As the Council has not decided otherwise within one month, the Commission can adopt the present Decision.
- (32) The Commission has notified the EEC-Turkey Association Council that the interests of the Community call for immediate action. Moreover, the Commission has applied to the Association Council that it address recommendations to the person or persons with whom abovementioned practices originate for the purpose of putting an end to them,

HAS DECIDED AS FOLLOWS:

Article 1

The undertaking offered by Elyafli cemento sanayi ve tecaret AS — Istanbul, Turkey in connection with the anti-dumping proceeding concerning imports of certain asbestos cement pipes falling within CN code ex 6811 30 00 and originating in Turkey is hereby accepted.

Article 2

The investigation in connection with the anti-dumping proceeding concerning imports of certain asbestos cement pipes originating in Turkey is hereby terminated.

Done at Brussels, 21 June 1991.

For the Commission

Frans ANDRIESEN

Vice-President