

COMMISSION REGULATION (EEC) No 2227/93

of 6 August 1993

imposing quantitative restrictions on imports of unwrought aluminium originating in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Estonia, Latvia and Lithuania

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1765/82 of 30 June 1982 on common rules for imports from State-trading countries⁽¹⁾, as last amended by Regulation (EEC) No 848/92⁽²⁾, and in particular Article 11 thereof,

After consultations within the committee set up by Regulation (EEC) No 1765/82;

Whereas :

Procedure

The Commission was informed that imports into the Community of unwrought aluminium originating in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Estonia, Latvia and Lithuania had increased considerably and were continuing to grow in such a way as to cause serious injury to the Community industry. The French Government made a request on 3 February for Community safeguard measures to be applied to these imports, pursuant to Article 11 of Regulation (EEC) No 1765/82.

Following consultations with the Member States, the Commission announced, in a notice published in the *Official Journal of the European Communities*⁽³⁾, that a Community investigation would be instituted in connection with the imports in question.

The Commission made efforts to gather all the necessary information and to check all the information received.

The Commission carried out on-site checks in Germany, Spain, Italy, France, the Netherlands and the United Kingdom.

InterComAlum, which represents the interests of producers in Russia and the other countries of the Commonwealth of Independent States (CIS), as well as those of some European and American producers and sellers, made its views known to the Commission.

The Commission also granted a hearing to certain users of aluminium imported from the countries cited.

Product

The product involved in the investigation is unwrought aluminium falling within CN code ex 7601 (aluminium, not alloyed, falling within CN code 7601 10 00, and aluminium alloys, primary, falling within CN code 7601 20 10), originating in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Estonia, Latvia and Lithuania.

Imports of this product into the Community are unrestricted and carry a customs duty of 6 %. Unwrought aluminium is not included in the GSP (generalized system of preferences).

Production process and grade

Unwrought aluminium is produced in two ways :

1. electrolysis/smelting ;
2. smelting alone.

The unwrought aluminium produced by both these processes is comparable in all respects.

Unwrought aluminium is sold in the form of ingots, bars and billets. Bars and billets can be used to produce semi-finished products by rolling or extrusion.

Unwrought aluminium is generally of a 99,7 % pure A 1 grade.

Like and competing products

Community output from the electrolysis/smelting process is mainly unwrought aluminium alloy of a 99,7 % pure A 1 grade.

Unwrought aluminium imported from the non-member countries in question is mostly unalloyed and often less than 99,7 % pure.

By smelting with aluminium of a different quality, the lower-grade metal can be brought up to the required level of purity and alloyed.

Community products are therefore similar and compete in every respect with imported products.

⁽¹⁾ OJ No L 195, 5. 7. 1982, p. 1.

⁽²⁾ OJ No L 89, 4. 4. 1992, p. 1.

⁽³⁾ OJ No C 94, 3. 4. 1993, p. 4.

World market

There is a world market for aluminium on which the price of the unwrought metal is determined with reference to the price on the London Metal Exchange (LME) for A 1 99,7 ingots.

This means that the price of unwrought aluminium in ingots is basically the same around the world.

The Community industry uses this base price for the vast majority of its sales both to independent customers and to associate companies⁽¹⁾.

Premiums are added to the base price depending on composition, the shape of the product and transportation. The base price may also be reduced in line with product quality.

The unforeseeable and sudden increase in exports from the non-member countries in question has totally upset the balance of supply and demand on which the LME price is based.

The result of the imbalance has been a rise in world stocks (from 1 807 000 tonnes in 1989 to 3 500 000 tonnes in 1992) and a drop in the LME ingot price (three-month reference: from US\$ 1 907,3 per tonne in 1989 to US\$ 1 292,5 per tonne in 1992).

Community industry

The Community producers of unwrought aluminium consulted during the investigation account for 90 % of Community output. The firms are located in Germany, Spain, Italy, Greece, the Netherlands, the United Kingdom and France.

Consumption of unwrought aluminium in the Community

Apparent consumption of unwrought aluminium in the Community was 3 779 000 tonnes in 1989 (including East German consumption estimated at 90 000 tonnes), and rose to 3 841 000 tonnes in 1990 (including East German consumption estimated at 61 000 tonnes), 3 837 000 tonnes in 1991 and 3 975 000 tonnes in 1992, an increase of over 7 %.

⁽¹⁾ Exceptions are some sales based on long-term contracts dating from before 1990 (now lapsing).

Situation of the Community industry

1. Output

The overall output of the Community industry decreased by 5 %, from 2 375 000 tonnes in 1989 to 2 255 000 tonnes in 1992.

These figures include unwrought aluminium produced by electrolysis (approximately 2 130 000 tonnes in 1989 and approximately 1 965 000 tonnes in 1992).

2. Capacity

Production capacity using the electrolytic process increased from 2 165 000 tonnes in 1989 to 2 355 000 tonnes in 1992, a rise of 7,8 %.

The Community industry used 100 % of its capacity until 1989. The figure has since fallen, reaching 83 % at the end of 1992.

This under-use of capacity has had a not inconsiderable effect on the deterioration in the financial results of the Community producers, because of the fixed costs which they must meet.

3. Sales

Sales were 2 800 000 tonnes in 1989 and 2 680 000 tonnes in 1992, a fall of 6 %.

The value of these sales dropped from US\$ 5 800 000 in 1989 to US\$ 4 050 000 in 1992, a fall of 30 %.

Sales fell despite the increase in Community consumption.

4. Production cost

All the Community producers dropped their production price per tonne by 15 to 20 % between 1989 and 1992.

This unit cost, in dollars, was still below the LME reference price in 1989, but is now far above it (1992 production cost: US\$ 1 830 per tonne, LME price: US\$ 1 280 per tonne).

5. Stocks

Factory stocks grew from 145 000 tonnes in 1989 to 175 000 tonnes in 1992, an increase of 20 %.

6. Prices

Selling prices per tonne fell from US\$ 2 000 in 1989 to US\$ 1 440 in 1992.

This price is currently far below the cost of production (an average of 22 % lower as of March to May 1993).

7. Profitability

The downward trend in selling prices has put the Community industry in a difficult position despite lower production costs.

The industry made a profit until 1989 (approximately 25 % on its sales), but this then gradually diminished.

In 1992, losses were running at approximately 15 % of the value of sales.

8. Employment

The number of people employed decreased from 16 200 in 1989 to 13 900 in 1992, a fall of 15 %. For some companies, however, the drop exceeded 40 %.

9. Closures

The number of plants fell from 28 in 1990 to 22 in 1992. Of those remaining, six have halted some of their production lines.

Conclusion

The Community industry is in serious difficulties from an economic and financial point of view.

This damaging situation contrasts with the Community industry's status as technologically one of the most advanced in the world.

Sales of aluminium from the former Soviet Union

1. Exports

Exports to the West of unwrought aluminium from the countries of the former Soviet Union have increased continuously since 1989. The volume of exports was 190 000 tonnes in 1989, 434 000 tonnes in 1990, 886 000 tonnes in 1991 and 839 000 tonnes in 1992.

The great majority went to Europe and the Community in particular, because of its proximity.

2. Imports

Imports into the Community of unwrought aluminium from the non-member countries concerned are of two types: permanent imports (aluminium for use in the Community) and temporary imports (aluminium entering the Community under inward processing arrangements).

Permanent imports rose from 75 000 tonnes in 1990 (including 60 000 tonnes imported into East Germany), to 134 000 tonnes in 1991 and 351 000 tonnes in 1992.

Temporary imports ran at 129 000 tonnes in 1990, 195 000 tonnes in 1991 and 177 000 tonnes in 1992.

The overall quantity of primary aluminium which entered the Community from the former Soviet Union was therefore 144 000 tonnes in 1990, 329 000 tonnes in 1991 and 528 000 tonnes in 1992.

3. Market share

The share of the Community market occupied by permanent imports was nil in 1989, 1,6 % in 1990, 3,5 % in 1991 and 9 % in 1992.

4. Prices

The average price of the imports in question was ECU 1 631 per tonne in 1989, ECU 1 336 per tonne in 1990, ECU 1 067 per tonne in 1991 and ECU 917 per tonne in 1992. This average price is considerably below the LME price.

The average margin by which average prices in intra-Community trade were undercut was 16 % in 1990, 22 % in 1991 and 23 % in 1992.

Prices of aluminium imports from the countries in question are usually lower than the LME prices, and moreover lower than the production costs of the most efficient of the Community producers.

Cause and effect

1. The effect of the imports in question

The drop in the Community output and market share has coincided with the increase in imports from the non-member countries concerned on the Community market.

Between 1989 and 1992, more particularly, the market share lost by Community products (-8 %) was paralleled by a gain in market share for imports from the former Soviet Union (from 1,5 to 9 %).

The rapid increase in such imports is closely connected with the low price at which they have been sold on the Community market, up to 30 % below the prevailing LME price as a result of the metal's lower level of purity.

As a result of this situation, the Community industry has lost sales and market share, and has had to cut output, to the benefit of imports of unwrought aluminium from the countries in question.

2. Other considerations

(a) The drop in the LME reference price

The fall in the world price has had an adverse effect on the viability of the aluminium industry, and this effect has indiscriminately affected producers worldwide.

The situation of the Community industry has, however, been further worsened by the fact that it has the only western producers to have been faced with a massive influx of lower-grade imports from the former Soviet Union at prices undercutting the LME price.

(b) Trends in consumption

Between 1989 and 1992 apparent Community consumption of unwrought aluminium increased by approximately 7 %, from 3 705 000 to 3 975 000 tonnes.

The harm suffered by the Community industry cannot, therefore, be put down to a contraction of Community demand.

(c) Increase in the Community industry's production capacity

Data on capacity trends show there was a limited increase in capacity, equivalent to the increase in demand.

The increase cannot therefore be considered to have caused serious injury.

(d) Imports from other non-member countries

Imports from non-member countries not targeted by the Community procedure were 1 562 000 tonnes in 1989, 1 628 000 tonnes in 1990, 1 592 000 tonnes in 1991 and 1 618 000 tonnes in 1992. They therefore increased over this period by approximately 3,5 % and their market share remained stable at around 40 %. These imports are sold at prices based on the prevailing LME price, and do not undercut the Community producers' rates.

In the light of these considerations, it does not seem that the pattern of these imports could have caused or helped to cause injury to the Community industry.

(e) Competitiveness of the Community industry

The Community industry faces high energy costs and steadily increasing labour costs.

Production costs nevertheless fell by 15 to 20 % between 1989 and 1992 as a result of increased productivity and a drop in the price of alumina.

Conclusion

Other factors may have contributed to the decline in the Community industry's position but it is clear that the goods in question and the circumstances under which

they were imported were the only cause of serious injury to Community producers.

Measures

Commission considers that a negotiated solution to the problem of imports of unwrought aluminium into the Community would help to ensure problem-free growth in trade in unwrought aluminium between the Community and the countries concerned in this investigation in the future and would, therefore, serve the Community interest.

However, following contacts with the main exporting country, it is forced to conclude that such a solution is not within reach at present because the non-member countries concerned lack the means to implement it effectively.

In these circumstances, given the critical position of the Community industry, which would suffer almost irreparable injury in the event of delay, the Commission considers that, pending a mutually satisfactory solution, the Community must temporarily introduce safeguard measures.

To this end, the Commission considers that, at this stage, imports into the Community of unwrought aluminium originating in the non-member countries in question should be limited up to 30 November 1993 to 60 000 tonnes, which corresponds to traditional volume of trade.

In addition, the products in question may be put into free circulation only on production of an import authorization, which will be issued by the Member States, subject to the limits in quantities set out above, within 10 days of the request being lodged.

The breakdown of the quota of 60 000 tonnes between the Member States will be decided in accordance with the procedure set out in Article 11 of Council Regulation (EEC) No 1023/70⁽¹⁾.

The measures do not prevent products already en route to the Community being put into free circulation, provided that they cannot be delivered to any other destination.

Community interest

The Commission considers that since the volume has been set with reference to traditional trade flows and for a limited period, the measure to be introduced will have little effect on independent processors supplied by the non-member countries and on consumers of finished and semi-finished products.

⁽¹⁾ OJ No L 124, 8. 6. 1970, p. 1.

With regard to the introduction of safeguard measures, their particular interests cannot, in the circumstances, be put before those of Community producers of like products and producers of finished and semi-finished products, whom they supply. Failure to take action would very quickly jeopardize the viability of the Community industry and some producers would face the prospect of halting production. Given these conditions, the Community interest requires immediate action,

HAS ADOPTED THIS REGULATION:

Article 1

From the date of this Regulation's entry into force until 30 November 1993, imports into the Community of unwrought aluminium originating in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Estonia, Latvia and Lithuania falling within CN codes 7610 10 00 and 7601 20 10 shall be restricted to a global quota of 60 000 tonnes.

Article 2

The quota referred to in Article 1 shall be divided between the Member States in accordance with traditional trade flows, pursuant to the procedure set out in Article 11 of Regulation (EEC) No 1023/70.

Article 3

1. Products subject to the quota referred to in Article 1 shall be put into free circulation in the Community only in accordance with the attributions set out under the system referred to in Article 2 and on production of an import authorization.

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

Done at Brussels, 6 August 1993.

2. The import authorization shall be issued by the importing Member State within 10 working days of the import request being lodged.

3. The authorization shall be valid for a period of two months and may be renewed.

4. The request submitted by the importer shall give:

(a) the name and address of the importer and exporter;

(b) a product description including:

— the name under which it is traded,

— the relevant CN code,

— the country of origin,

— the country of provenance;

(c) the cif-free-at-Community-frontier price in ecus, by nomenclature heading;

(d) the net weight by heading in the Community nomenclature;

(e) the intended date(s) and place(s) of import.

5. The applicant shall vouch for the accuracy of the information contained in the request for an import authorization.

Article 4

Article 1 to 3 shall not apply to products which, at the time of the Regulation's entry into force, were under way to the Community, provided that such products cannot be delivered to any other destination.

Article 5

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

It shall apply until 30 November 1993.

For the Commission

Leon BRITTAN

Vice-President