

COMMISSION REGULATION (EEC) No 1808/92

of 30 June 1992

imposing a provisional anti-dumping duty on imports of ferro-silicon originating in Poland and Egypt

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 Articles 10 and 11 thereof,

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

Whereas :

A. PROCEDURE

- (1) In December 1990 the Commission received a complaint lodged by the Liaison Committee of Ferro-alloy Industries in the European Economic Community on behalf of almost all the Community producers of ferro-silicon.

The complaint contained evidence that imports of the product concerned from Poland and Egypt were being dumped and were causing injury, and this evidence was considered sufficient to justify initiation of a proceeding. Consequently, in a notice published in the *Official Journal of the European Communities*⁽²⁾ the Commission announced the initiation of an anti-dumping proceeding concerning imports of ferro-silicon originating in Poland and Egypt and opened an investigation.

- (2) Commission Regulation (EEC) No 2409/87⁽³⁾, Commission Decision No 91/240/EEC⁽⁴⁾ and Council Regulation (EEC) No 341/90⁽⁵⁾ and (EEC) No 1115/91⁽⁶⁾ imposed measures on imports of ferro-silicon originating in the Soviet Union, Brazil, Norway, Sweden, Iceland, Venezuela and Yugoslavia.
- (3) The Commission officially notified producers/exporters, importers and Community producers known to be concerned of the initiation of the

proceeding and gave the parties concerned the opportunity to make known their views in writing.

- (4) The producers/exporters and certain importers requested the opportunity to express their views orally and their request was granted.

- (5) The Commission obtained and checked all the information it considered necessary for determining whether dumping had taken place and resulted in injury and it carried out inspections at the premises of:

— Community producers :

- Pechiney Électrometallurgie, France,
- SKW Trostberg AG, Germany,
- Ferrolegerungswerk Lippendorf GmbH, Germany,
- Carbueros Metálicos, Spain,
- Industria Elettrica Indel Spa, Italy,
- Utilizzazioni Elettro Industrial UEI, Italy ;

— Community importers :

- Frank und Schulte GmbH, Germany,
- Lemetco GmbH, Germany,
- Deutsche Erz- und Metallgesellschaft mbH, Germany ;

— Egyptian producer :

- EFACO, The Egyptian Ferro Alloys Co., Egypt.

- (6) The Commission conducted an investigation at the premises of Elkem in Norway, since Norway had been selected as a like country for the purposes of calculating Poland's normal value (see recital 14).

- (7) The Commission received and used information from importers, producers in the exporting countries and the complainants.

- (8) The investigation into dumping practices covered the period 1 January 1990 to 31 March 1991.

B. PRODUCT

1. Description of the product

- (9) The product concerned is ferro-silicon containing between 10 and 96 % of silicon by weight and falling within CN codes 7202 21 10, 7202 21 90 and 7202 29 00.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 122, 8. 5. 1991, p. 4.

⁽³⁾ OJ No L 219, 8. 8. 1987, p. 24.

⁽⁴⁾ OJ No L 111, 3. 5. 1991, p. 47.

⁽⁵⁾ OJ No L 38, 10. 2. 1990, p. 1.

⁽⁶⁾ OJ No L 111, 3. 5. 1991, p. 1.

2. Like product

- (10) The Commission established that the ferro-silicon produced in the Community and that sold on the domestic markets of Egypt and Norway and the products exported by Egypt and Poland were like products in all essential physical and technical properties.

C. DUMPING

1. Normal value

(a) *Egypt*

- (11) The Commission ascertained that, during the reference period, as part of normal commercial transactions, sales on Egypt's domestic market of the like products produced by the Egyptian firm which cooperated in the investigation were negligible.

This value was therefore based on a constructed value established by adding the production costs and a reasonable profit margin. The production cost was calculated on the basis of all the fixed and variable materials and manufacture costs plus a reasonable amount for selling costs, administrative expenditure and other overheads.

In calculating the overheads, administrative expenditure and selling costs, the Commission took as a basis all the present costs of the sector concerned.

As the entire sector sold at a loss during the reference period, the Commission took a profit margin of 6 %, which was considered reasonable in the light of the productive investment requirements of an industry of this kind in Egypt.

(b) *Poland*

- (12) Account being taken of the fact that during the reference period Poland could not be considered as a market-economy country, the Commission had to base its calculations on the normal values of the products concerned in a market-economy country.

The Polish producer who cooperated in the investigation agreed that Norway be taken into account as a like country. The Commission ascertained that the products of the two countries were largely similar, and that there were no significant dispar-

ties in the manufacturing process or scale, or in access to the main components of the production cost. Consequently, the Commission concluded that the choice of Norway was appropriate and not unreasonable for determining Poland's normal value.

As the Norwegian producer who cooperated in the investigation did not sell sufficient quantities of the like product on his domestic market, the Commission had to determine the normal value on the basis of a constructed value established by adding production costs and a reasonable profit margin.

The production cost was calculated on the basis of all the fixed and variable materials and manufacture costs, plus a reasonable amount for selling costs, administrative expenditure and other overheads.

In calculating the overheads, administrative expenditure and selling costs, the Commission took as a basis all the present costs of the sector concerned.

The Commission took a 6 % profit margin, which was considered reasonable for guaranteeing the industry productive investment on a long-term basis. This margin was in line with the profit margin of 6 % as a weighted average obtained by the sector over the last three available tax years preceding the reference period in Norway.

- (13) The Polish producer accepted the decision to take Norway as a like country, but queried the use of a constructed value, arguing that the Polish company had advantages as regards certain components of the production cost. The Polish producer was, however, unable to quantify or give details of the alleged advantages.

In this context, by using the Norwegian firm, which was recognized as one of the most efficient in the world, the Commission considered that it had taken full account of any comparative advantage which might exist in the supply and cost of some of the Polish producer's raw materials. During the reference period, the Norwegian unit operated at almost its maximum production capacity, and this reduced the fixed costs accordingly; these were in any event low in relation to the total cost per tonne produced. This firm's production costs illustrate its very high level of productivity; it also produces its own energy, an essential component of the production cost, and has facilities for handling other raw materials, such as quartz.

2. Export prices

- (14) Export prices were established on the basis of the prices actually paid or payable for products sold for export to the Community.

— for Egypt from 5 000 tonnes in 1989 to 12 000 tonnes in 1990 and 6 000 tonnes in the first quarter of 1991.

- (20) These two countries' market shares, measured in terms of Community consumption, have increased considerably :

— for Poland : 0,3 % in 1989, 3,1 % in 1990 and 5,1 % in 1991,

— for Egypt : 0,9 % in 1989, 2,1 % in 1990 and 4,1 % in 1991.

3. Comparison

- (15) In comparing normal value with the export prices on a transaction-by-transaction basis, the Commission took account of differences affecting the comparability of prices, when appropriate and where sufficient evidence was provided to illustrate the direct link with the sales concerned; such adjustments were concerned mainly with payment and delivery terms, transport and insurance costs and different forms of presentation and packaging.

- (21) The resale prices in the Community for the product imported from Poland and Egypt were lower than Community producers' average prices, which had already depreciated, and the undercutting involved varied on average from 5 % for Poland to 12 % for Egypt.

4. Dumping margins

- (16) Comparison of the above facts reveals that dumping did take place. The dumping margin calculated for each exporter is equal to the difference between the normal value and the price of exports to the Community, duly adjusted.

- (17) On the basis of the free-at-Community-frontier price, the average weighted margin for the exporters concerned is as follows :

— Poland's producers/exporters	43,9 %
— the Egyptian producer/exporter Efaco, Egyptian Ferro-Alloys Co.	61,5 %

3. The Community industry's situation

(a) Community capacity and production

- (22) From the 1989 to 1990, the Community's production capacity, including that of the former German Democratic Republic, remained at around 360 000 tonnes. Community production has declined constantly, and the total, including the former German Democratic Republic, fell from 250 000 tonnes in 1989 to 150 000 tonnes in 1991, and some of this output was exported or held in stock; this corresponds to a utilization rate of roughly 42 % for 1991.

(b) Market share and consumption

- (23) Between 1989 and 1991, the Community producers' market share declined from 36 to 26 % (the percentage includes the former German Democratic Republic), while the Community's annual consumption stabilized at around 600 000 tonnes over the same : it was obvious that consumption favoured imports from outside the Community, including imports from Poland and Egypt.

(c) Prices

- (24) The low level of import prices over the investigation period meant that Community producers had to sell the product in the Community at prices which in most cases did not cover their production costs. The low level of prices not only prevented Community producers from raising their prices in order to reflect the rise in production costs, but even forced them to lower their prices, although this did not stop them from losing market shares.

D. INJURY

1. Cumulative effect of the imports

- (18) The imports originating in Poland and Egypt have had a cumulative effect, given the similarity of the products exported to the Community, the competition with like products manufactured by the Community industry and the significant volume of the exports.

2. Volume, market share and import prices

- (19) There has been a considerable increase in Poland's and Egypt's exports to the Community; they have risen :

— for Poland from 1 600 tonnes in 1989 to 18 000 tonnes in 1990 and 7 000 tonnes in the first quarter of 1991,

(d) Results

- (25) In 1988 a number of Community firms made small profits, and the situation improved briefly in the first half of 1989 as a result of the sharp rise in selling prices linked with the upturn in the steel industry and the impact of restructuring measures.

The Community industry nevertheless again recorded appreciable losses bordering on 26 %.

(e) Conclusion

- (26) Despite the restructuring effort made by Community producers, the industry's position has declined considerably, as reflected in the financial losses and the reduction in its market share. The Commission concludes accordingly that the industry has suffered material injury.

4. Cause and effect and other factors

- (27) It was ascertained in the course of the investigation that the trend in imports originating in Poland and Egypt, the relative increase in their combined market shares from 1,2 % in 1989 to 9,2 % in 1991, and the downward pressure on prices exerted by these imports, coincided with the deterioration in the Community industry's competitive and financial situation.
- (28) The Community examined whether other factors, such as imports of products from other non-Community countries, could have caused the injury to the Community industry.
- (29) While the Community industry is affected by imports from other non-Community countries, namely Norway, Sweden, Iceland, Venezuela, Yugoslavia, the former Soviet Union and Brazil, the increasing volume of sales of the Polish and Egyptian products and the undercutting of the prices charged by Community producers alone constitute a contributory factor to the deterioration in the Community industry's situation. In this context, it should be pointed out that imports from the countries listed above are subject to anti-dumping measures, and these countries would be the object of discrimination and the effectiveness of these measures would be undermined if no measures were taken against Poland and Egypt.
- (30) The Commission accordingly concluded, on the basis of the above, that imports of products originating in Poland and Egypt and covered by this

proceeding were a source of material injury to the Community ferro-silicon industry.

E. COMMUNITY INTEREST

- (31) It is in the Community's interest to restore fair competition, without the disturbance of unfair practices. Continued dumping giving rise to material injury would threaten the survival of the Community industry.

In view of ferro-silicon's importance in steel-making, it could not be in the Community's interest to depend wholly on non-Community suppliers, particularly since some are located at a great distance from the Community.

- (32) The representatives of the Community's processing industry and of individual firms have argued that it would be against the Community's interest to keep protective measures in force since they would weaken competitiveness with regard to imports of finished products originating in non-Community countries.
- (33) As is the case of any raw material, it is probable that price rises influence the costs of the manufacturing industries. However, no firm provided clear evidence of a specific effect of ferro-silicon price increases on its production costs; nor was evidence supplied of the possible impact of an increase in manufacturers' prices on their total sales. The Commission considers that the impact would be slight, particularly in view of the low percentage of ferro-silicon used in the production of a tonne of steel and the relatively small proportion of the overall cost of a tonne of steel represented by this product.
- (34) Having carefully compared the above arguments and the problems faced by the Community ferro-silicon industry, which can be attributed to a significant extent to the imports in question, the Commission has concluded that it is in the Community's interest to take action to prevent injury from occurring during the proceeding.

F. DETAILS OF THE MEASURES

- (35) Since for each of the two countries the dumping margin, expressed as a percentage of the net free-at-Community-frontier price of the product before customs duty, exceeds the injury threshold, the Commission considers that measures should be introduced in proportion to the injury thresholds.

- (36) As regards the injury threshold, in order to determine the margin by which the prices for exports to the Community must be increased in order to enable the Community industry to raise its prices too and so become profitable again, the Commission considers that Poland's and Egypt's imports should be effected at prices which would enable the Community industry to make a reasonable profit.

The Commission has taken as a reasonable profit margin an average of 6 %, which should guarantee the industry the investment it needs in order to survive. In the light of the most representative Community producers' production cost, prices need to be raised by 32 % in order to make a profit of this order.

This margin also represents the amount by which the prices for exports of ferro-silicon originating in Egypt and Poland should be increased in order for the injury caused by dumping to be removed.

G. FORM TO BE TAKEN BY THE MEASURES

1. Undertakings

- (37) The following Egyptian firm, which produced and exported to the Community during the reference period, namely:

— Efaco, The Egyptian Ferro-Alloys Co., Egypt

has proposed a price undertaking. The Commission, following consultations, has found this undertaking acceptable. There is therefore no need for the provisions of this Regulation to affect imports of ferro-silicon produced by this company.

2. Provisional duties

- (38) In the light of recital 36, the rate of the provisional duty should be 32 % for imports into the Community of ferro-silicon from Poland and Egypt.
- (39) A time limit should be laid down by which the parties concerned can make known their views in writing and request a hearing. All the statements made for the purpose of this Regulation are provi-

onal and may be reviewed if a definitive duty proposed by the Commission has to be calculated,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of ferro-silicon originating in Poland and Egypt, containing by weight 10 % to 96 % of silicon and falling within CN codes 7202 21 10, 7202 21 90 and 7202 29 00.

2. The duty, expressed as a percentage of the net free-at-Community-frontier price of the product before customs duty, shall be 32 % for Poland and Egypt.

3. The provisional anti-dumping duty shall not apply to products manufactured by the Egyptian company:

— Efaco, The Egyptian Ferro-Alloys Co., Egypt,

whose undertaking given in the context of this anti-dumping proceeding has been accepted.

4. The provisions in force concerning customs duties shall apply.

5. Security equal to the amount of the provisional duty must be lodged in order for the products referred to in paragraph 1 to be released for free circulation.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make their views known in writing and request a hearing by the Commission within one month from the date of entry into force of this Regulation.

Article 3

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

Subject to the provisions of Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation shall be applied for a four month-period, unless the Council adopts definitive measures before the end of this period.

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

Done at Brussels, 30 June 1992.

For the Commission

Frans ANDRIESEN

Vice-President
