

COMMISSION DECISION No 67/94/ECSC

of 12 January 1994

imposing a provisional anti-dumping duty on imports into the Community of hematite pig iron, originating in Brazil, Poland, Russia and Ukraine

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel 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 consultations within the Advisory Committee as provided for by the abovementioned Decision,

Whereas :

A. PROCEDURE

- (1) In June 1991 the Commission received a complaint lodged by 'Eurofontes' on behalf of producers whose collective output constitutes the majority of Community production of the product in question. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (2) The Commission accordingly 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 pig iron, originating in Turkey and the then Soviet Union, falling within CN codes 7201 10 19 and 7201 10 90.
- (3) In July 1992, the Commission received a supplementary complaint, which again contained evidence of dumping and resultant material injury, and was considered sufficient to justify the extension of the proceeding to include imports of hematite pig iron, originating in Brazil and Poland.
- (4) The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*⁽³⁾, the extension of the anti-dumping proceeding to include imports of hematite pig iron, originating in Brazil and Poland.
- (5) The proceeding concerning imports of the product concerned originating in Turkey was terminated in

August 1992 following the withdrawal of the complaint. The Commission considered that there was no reason to continue the investigation with regard to this country.

- (6) By Decision 92/423/ECSC⁽⁴⁾ the Commission therefore announced the termination of the proceeding with regard to Turkey.
- (7) The Commission officially advised the exporters and importers known to be concerned, representatives of the exporting countries and the complainants. Interested parties were given the opportunity to make known their views in writing and to request a hearing.
- (8) Most exporters, certain importers and the complainants made their views known in writing.
- (9) 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 :
 - DK Recycling and Roheisen GmbH, Germany,
 - Halbergerhütte GmbH, Germany,
 - Preussag Stahl AG, Germany,
 - Thyssen Stahl AG, Germany,
 - Eko Stahl AG, Germany,
 - Maxhütte Unterwellenborn GmbH, Germany,
 - Cleveland Iron, United Kingdom,
 - Alti Forni e Ferriere di Servola SpA, Italy ;
 - (b) Producers in Brazil :
 - Siderpa Siderúrgica Paulino Ltda,
 - Interlagos Siderúrgica Ltda,
 - Siderúrgica União Bondespachense,
 - Siderúrgica Alterosa Ltda,
 - Siderúrgica Valinho SA,
 - Viena Siderúrgica Do Maranhão SA ;

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 18. Corrigendum : OJ No L 273, 5. 10. 1988, p. 19.

⁽²⁾ OJ No C 246, 21. 9. 1991, p. 9.

⁽³⁾ OJ No C 322, 9. 12. 1992, p. 2.

⁽⁴⁾ OJ NO L 230, 13. 8. 1992, p. 30.

(c) Producers in Poland :

- Huta Szczecin,
- Huta Czestochowa,
- Huta Bobrek ;

(d) Importers into the Community :

- Leopold Lazarus Ltda, United Kingdom,
- Eisen und Metall AG, Germany.

- (10) The investigation of dumping covered the period 1 November 1991 to 31 October 1992.

B. PRODUCT UNDER INVESTIGATION, LIKE PRODUCT

Description of the product

- (11) The products which were the subject of the complaint were non-alloy pig iron containing by weight 0,5 % or less of phosphorus and falling within CN codes 7201 10 19 (containing by weight not less than 0,4 % of manganese and more than 1 % of silicon), called hematite pig iron, and 7201 10 90 (containing by weight less than 0,1 % of manganese) called spheroidal graphite (SG) pig iron.

However, it was established that, although products falling within both code numbers have certain similarities, they show significant differences in chemical properties and in end use and are for most purposes not interchangeable. Consequently, they were considered separate products and as the quantities of SG pig iron imported from the countries concerned were relatively small, this product was excluded from the investigation. After consultation the Community producers agreed.

Hematite pig iron is used for the production of cast iron with flake graphite (grey cast iron), in particular for high-quality machine and machine-tool castings as well as for castings with thermal and chemical stress.

This grade of pig iron provides a high reliability of the final analysis and, therefore, the observance of the desired mechanical properties of the castings, with the result that a higher yield of quality castings can be achieved.

The Commission found that hematite pig iron produced by the Community industry is like in all essential physical and technical characteristics to that imported from the countries concerned and all

such products can therefore be considered 'like' within the meaning of Article 2 (12) of Decision No 2424/88/ECSC.

C. DUMPING

(a) Brazil

- (12) According to the complaint, 74 companies in Brazil were exporting the product concerned to the European Community during the investigation period.

Of these companies 21 replied to the questionnaires sent by the Commission, of which 17 showed exports to the Community during the investigation period. These 17 companies accounted for 76 % of the relevant exports to the Community on the basis of Eurostat figures.

In order to facilitate the investigation, the Commission and the companies concerned agreed to a procedure, by which the existence of dumping would be established on the basis of the data supplied by six representative companies.

Normal value

- (13) The investigation showed that for the companies selected more than 90 % of sales on the domestic market were made at a loss. They were therefore not considered to have been made in the ordinary course of trade. Normal value was then established in accordance with the provisions of Article 2 (3) (b) (ii) and (4) of Decision No 2424/88/ECSC, that is, on the basis of a constructed value, determined by adding the cost of production and a reasonable margin of profit.

In view of the high inflation rate in Brazil and in order that a comparison with the export price could be made as nearly as possible at the same time, normal value was calculated on a monthly basis.

In the absence of another valid criterion for the determination of the reasonable level of profit, the percentage taken was 5 %, which according to the information available to the Commission concerning this industry corresponds to the minimum percentage considered necessary to carry out essential investment and to remain viable.

Export price

- (14) All exports were sold to independent importers on a fob basis. The export prices established are, therefore, those actually paid or payable for the product

sold for export to the Community, net of all taxes, discounts and rebates actually granted and directly related to the sales under consideration.

Comparison

- (15) Adjustments to the export prices were made to take account of the costs incurred from ex factory to fob. The comparison of the monthly normal value with adjusted export prices on a transaction-by-transaction basis was made at an ex factory level at the same level of trade.

Dumping margin

- (16) The weighted average dumping margin found for the Brazilian companies was 51,3 % of the cif export price.

(b) Poland

Normal value

- (17) The investigation showed that for the companies concerned most sales on the domestic market in Poland were made at a loss. They were therefore not considered to have been made in the ordinary course of trade. Normal value was thus established in accordance with the provisions of Article 2 (3) (b) (ii) and (4) of Decision No 2424/88/ECSC, that is, on the basis of a constructed value, determined by adding the cost of production and a reasonable margin of profit.

Cost calculations were based on the available accounting data. However, in view of the different stages of economic and commercial reform within Polish companies, the available accounting data at company level did not always reflect the costs normally borne by companies that produce in a market economy.

In order to arrive at a constructed value that adequately reflected full costs under market economy conditions, adjustments to the available accounting data should have been made, in particular with respect to financing and depreciation costs.

Given the difficulties in obtaining accurate information in the present economic circumstances in Poland and in particular since the dumping margins found when using the available data exceeded the level of injury caused by the dumped imports (see recital 68), the Commission has in this specific case, and without prejudice to future anti-

dumping proceedings, refrained from making such adjustments.

Export price

- (18) The export prices established were those actually paid or payable for the product sold for export to the Community, net of all taxes, discounts and rebates actually granted and directly related to the sales under consideration.

Comparison

- (19) Adjustments to the export prices were made to take account of the costs incurred from ex factory level to the Polish frontier. The comparison of the adjusted export prices with the normal value was made on a transaction by transaction basis at an ex factory level and at the same level of trade.

Dumping margin

- (20) The dumping margins were calculated as being the total amount by which the normal values exceeded the prices of the exports to the Community.

The weighted average dumping margins expressed as a percentage of the cif declared customs value established for each of the Polish companies are as follows :

— Huta Czestochowa :	31,53 %,
— Huta Bobrek :	34,65 %,
— Huta Szczecin :	50,2 %.

(c) Russia and Ukraine

- (21) The Commission established that the imports of the product concerned from the former Soviet Union effectively came from Russia and Ukraine and, with the agreement of the complainants, limited the investigation to these two States. Accordingly, the investigation should be terminated without the imposition of measures with regard to the remaining States of the Commonwealth of Independent States (CIS) which had been included in the opening notice.

- (22) The Commission approached the authorities of Russia with the aim of obtaining the necessary information with regard to the exports of hematite pig iron from that country. A set of questionnaires was sent to the authorities together with a request to forward these to the companies concerned. However, no reply to any questionnaire has been received from any interested party in Russia, other than Promsyrimport, a trader, which has apparently played a relatively minor role in the export of pig iron since the creation of the CIS.

- (23) The Commission approached the authorities of Ukraine with the aim of obtaining the necessary information with regard to the exports of hematite pig iron from that country. A set of questionnaires was sent to the authorities together with a request to forward these to the companies concerned. The Ukrainian Ministry of Foreign Economic Relations confirmed by letter the receipt of the questionnaires and stated its intention to distribute them to the relevant companies. However, no reply to any questionnaire has been received from any other interested party in that country.

Normal value

- (24) Russia and Ukraine being non-market economy countries, the normal value has been determined in accordance with Article 2 (5) (b) of Decision No 2424/88/ECSC, that is on the basis of sales or cost of production of a like product in a market-economy country.

In view of the comparability of Brazil to Russia and Ukraine, with regard to access to and the availability of the major inputs for the production of pig iron, i.e. iron ore and energy, and taking into account the present transitory state of the Polish economy towards a market economy, which is reflected in the available accounting data, the Commission considered it appropriate and not unreasonable to take Brazil as the market-economy third country for the determination of the normal value of hematite pig iron, originating in Russia and Ukraine.

The normal value of Russian and Ukrainian hematite pig iron was therefore calculated as the weighted average of the normal value established for Brazil.

Export price

- (25) The Commission, in accordance with Article 7 (7) (b) of Decision No 2424/88/ECSC, considered that the most reasonable facts available were those contained in the Eurostat statistics which were accordingly used as the basis for establishing the fob frontier price of the Russian and Ukrainian product. The statistical prices, which did not distinguish between imports from Russia and those from Ukraine (see also recital 29), were lowered by the estimated costs for sea freight in each case.

Comparison

- (26) The comparison of the export prices with the normal value was made on a transaction-by-transaction basis at the same level of trade.

Dumping margin

- (27) The weighted average dumping margin found for both Russia and Ukraine is 104,51 % of the cif export price.

D. INJURY

Volume of the dumped imports and market shares

(a) Cumulation

- (28) The Commission is of the opinion that, for the determination of the impact on the Community industry, imports from all the countries in question must be taken into consideration. In analysing whether cumulation was appropriate, the Commission considered the comparability of the imported products and the extent to which each imported product competed in the Community with the like product of the Community industry. In addition, it was established that the behaviour on the Community market of all exporters was similar and that their market position as such was not negligible.

Claims by the Russian authorities that the quantity imported from Russia was not higher than 30 % of the total of imports from Russia and Ukraine during the investigation period have not been substantiated. Moreover, imports from those two countries together amounted to 66,795 tonnes; even if Russian exports did not exceed 30 % of this quantity, such an import volume cannot be considered negligible.

Accordingly, the Commission concluded that its findings should be based on the effect of the dumped imports cumulated from the four countries concerned.

(b) Volume and market shares of the dumped imports

- (29) The Eurostat data on which the Commission had to base its findings did not distinguish between the imports from Russia and those from Ukraine, or from any other country now belonging to the CIS. However, the Commission has further statistical information to suggest that the imports of the product concerned from the former Soviet Union came exclusively from Russia and Ukraine.
- (30) The evidence available to the Commission showed that the combined imports of the product concerned into the Community from Brazil,

Poland, Russia and Ukraine increased from 242 436 tonnes in 1987 to 370 685 tonnes in 1991 and to 414 041 tonnes during the investigation period, an increase of 70 %.

- (31) In terms of market shares based on total apparent Community consumption, the market penetration of the dumped imports increased from 30 % in 1987 to 44,33 % in 1991 and to 50,47 % during the investigation period.
- (32) The individual market shares developed from 21,8 % in 1987 to 25,39 % in 1991 and to 37 % in the investigation period in the case of Brazil and from 0 to 4,86 % and to 5,32 % over the same period in the case of Poland. The market shares of Russia and Ukraine showed a strong increase from 1987 until the end of 1990 from 8 to 16 %, and then declined to 1987 levels during the investigation period, which appears to have resulted from economic and administrative problems following the break-up of the former Soviet Union.

Prices of the dumped imports

- (33) The cif Community frontier prices of the imports under consideration declined on a weighted average basis from ECU 156,8 per tonne in 1987 to ECU 134,16 per tonne in 1991 and to ECU 126,15 per tonne during the investigation period.
- (34) Taken individually, the cif prices declined from ECU 162 per tonne in 1987 to ECU 144 per tonne in 1991 and to ECU 128 per tonne during the investigation period in the case of Brazil, from ECU 177 per tonne to ECU 127 per tonne and to ECU 138 per tonne in the case of Poland over the same period, and from ECU 143 per tonne to ECU 118 per tonne and to ECU 110 per tonne for Russia and Ukraine.

Undercutting

- (35) Sales of the dumped imports were to wholesalers in the Community who maintained substantial stocks during the reference period.
- (36) To establish whether there had been significant price undercutting by the dumped imports at the same level of trade, the Commission made adjustments to the price of the Community producers to take account of the costs of handling, financing, storage and general and administration expenses, plus a reasonable level of profit for a stockholding importer.
- (37) A comparison of the thus adjusted prices of the Community producers with those of the dumped imports revealed a price undercutting during the

investigation period of ECU 17,94 per tonne or 12,29 % in the case of Brazil, ECU 7,94 per tonne or 5,44 % in the case of Poland and ECU 29,94 per tonne or 20,52 % for both Russia and Ukraine.

- (38) On a cumulative basis the price undercutting amounted to ECU 18,82 per tonne or 12,9 %.

Situation of the Community industry

(a) Production

- (39) Overall Community production of hematite pig iron decreased from 591 436 tonnes in 1987 to 506 960 tonnes in 1991 and to 435 399 tonnes during the investigation period.

(b) Capacity utilization

- (40) Utilization of production capacity by the Community producers decreased from 39,58 % in 1987 to 33,09 % in 1991 and to 28,42 % during the investigation period.

(c) Sales

- (41) Sales by the Community industry on the Community market decreased from 506 707 tonnes in 1987 to 457 194 in 1991 and to 385 827 tonnes during the investigation period.

(d) Development of stocks

- (42) The level of stocks of hematite pig iron held by the Community industry increased significantly from 81 645 tonnes in 1987 to 159 088 tonnes in 1991 and to 178 277 tonnes at the end of the investigation period.

(e) Prices

- (43) On a weighted average basis the ex works selling prices of the Community producers decreased from ECU 179,53 per tonne in 1987 to ECU 179,19 per tonne in 1991 and to ECU 174,69 per tonne during the investigation period despite an increase in production costs over the same period.

(f) Profitability

- (44) Profitability of the Community industry improved from a loss of 10,98 % in 1987 to losses of 4,77 % in 1989 and thereafter declined sharply to a loss of 24,98 % during the investigation period.

Conclusion on injury

- (45) The examination of the facts on injury has shown that the Community industry suffered a significant loss of market share, the prevention of price increases to offset the rise in the cost of production, the deterioration of financial results and the closure of production facilities.

- (46) In these circumstances the Commission concludes that the Community industry has suffered material injury within the meaning of Article 4 (1) of Decision No 2424/88/ECSC.

E. CAUSE OF INJURY

(a) Effects of the dumped imports

- (47) In its examination of whether and the extent to which the material injury suffered by the Community industry was caused by the effects of the dumped imports, the Commission has found that the increase in volume and market share, and the decrease in prices of the dumped imports coincided with the fall in the Community industry's sales, loss of market share and serious loss of profitability.
- (48) The Commission found more particularly, that as a result of the persistent undercutting of its prices by these imports, the Community industry was forced to reduce its prices, despite increasing costs, in an attempt to maintain reasonable capacity utilization and market share. This depression in prices led in turn to unsustainable financial losses and some Community producers, already confronted by other adverse conditions such as diminishing demand, were not able to counter the effects of the dumped imports and were forced to close definitively their production facilities.
- (49) Under these circumstances, the Commission therefore considers that the material injury suffered by the Community industry has been caused by the dumped imports from Brazil, Poland, Russia and Ukraine.

(b) Other factors

- (50) The Commission has examined whether the injury suffered by the Community industry could have been caused by factors other than the dumped imports, in particular the evolution and impact of imports from third countries not covered by this proceeding.
- (51) Imports from other third countries had some effect on the situation of the Community industry during 1989 and 1990, but decreased substantially in the following years so that they did not have any significant effect after that.
- (52) Some of the production facilities that were closed were also used for the production of ferro-

manganese. The negative developments on the manganese market in the Community have contributed to the decision of the companies involved to close down their production facilities.

- (53) Since the activity of the hematite pig iron industry is, to a large extent, determined by the level of activity of the car industry, the decrease in car sales during the investigation period may partly explain the lowering of the consumption of the product concerned.
- (54) This development alone cannot, however, explain the significant loss of market share of the Community industry. Therefore, even if some injury may have been caused by other factors, the dumped imports taken in isolation have caused material injury to the Community industry.

F. COMMUNITY INTEREST

- (55) Hematite pig iron is used by foundries for casting a wide variety of iron products, used mostly in the automotive industry. Because of its chemical and physical characteristics, there is only a limited possibility for substitution by other types of pig iron or by high-quality scrap. Foundries therefore prefer a steady and sufficient supply of hematite pig iron.
- (56) Existing world-wide production capacity for hematite pig iron is rapidly diminishing. This reduction of capacity is partly a correction of existing overcapacity, but a further reduction of productive capacity has to be expected particularly in the exporting countries concerned as a result of environmental and economic policy changes.
- (57) In this context, the cost of charcoal in Brazil is rising significantly as a result of the legal obligation for pig iron producers to guarantee a sustainable source of charcoal by reforestation. Privatization plans in Poland and the CIS have fundamentally changed the economics of their iron and steel plants, and have already resulted in the permanent closure of plants and the destruction of production facilities.
- (58) In the face of such a reduction of sources of supply, it is in the interest of the Community to maintain a viable Community foundry pig iron industry. The absence of measures against the dumped imports from the countries concerned would threaten the continued existence of the remaining Community producers and thus the long-term supply requirements of purchasers of pig iron in the Community.

- (59) The trade practices of the exporting countries concerned distort the functioning of the world, and therefore the Community, market for hematite pig iron. The absence of measures to correct these distortions could lead to a further erosion of the Community production capacity, an erosion which would not take place in a situation of fair competition.
- (60) As regards prices, the Commission is aware that anti-dumping measures may have an effect on the prices to end users of the product concerned. However, the effect on the cost of products for which pig iron is a necessary element would be minimal.
- (61) On the other hand, a further weakening of the Community industry would be to the detriment of the end users of pig iron, as the resulting shortage of capacity would undoubtedly lead to higher prices and therefore higher costs for these end users.
- (62) In these circumstances the Commission considers that the interests of the Community call for protective measures against the dumped imports of hematite pig iron from Brazil, Poland, Russia and Ukraine.

G. PROVISIONAL DUTY

- (63) Having established that the dumped imports under consideration have caused material injury to the Community industry and that it is in the Community's interest to take action, the measures envisaged should only be sufficient to eliminate the injury caused.
- (64) A calculation was made in order to establish the price level at which the imports concerned cease to cause material injury to the Community industry. In this respect the Commission has based its calculation on the cost of production data supplied by the Community industry excluding certain of the least efficient companies. Added to the production cost is a profit margin of 5% on turnover, a margin that can be considered reasonable under present market conditions.
- (65) The Commission considers that in addition to restoring fair competition on the hematite pig-iron market, the measures should at the same time enable the exporting countries to secure a better return on their exports of the product concerned.
- (66) The Commission considers the introduction of a minimum price more appropriate in this particular case than any other type of measure in order to achieve these aims.
- (67) The Commission has found that since the minimum import price considered necessary to

remove the injurious effects of the dumping is, in each case, lower than the normal value established for the companies concerned, the provisional anti-dumping duty as provided for in Article 13 (3) of Decision No 2424/88/ECSC does not exceed the dumping margins established.

- (68) Taking into account the costs normally incurred by importers of the product concerned and their need for a reasonable rate of profit, together with the calculation on injury as outlined in recital 64, the Commission considers it appropriate to establish, by way of a provisional measure, a variable duty equal to the difference between the minimum price (cif duty unpaid) of ECU 149 per tonne and the declared customs value of the product concerned originating in Brazil, Poland, Russia and Ukraine in all cases where the declared customs value is less than the minimum import price.
- (69) A period should be fixed within which the parties known to be concerned may make their views known and request a hearing. A one-month period is considered appropriate for this purpose. 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 propose,

HAS ADOPTED THIS DECISION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of hematite pig iron falling within CN code 7201 10 19, originating in Brazil, Poland, Russia and Ukraine.
2. The amount of the duty shall be the difference between the price of ECU 149 per tonne (cif duty unpaid) and the declared customs value in all cases where the declared customs value is less than the minimum import price.
3. The provisions in force concerning customs duties shall apply.
4. The release for free circulation 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

The anti-dumping proceeding with regard to the successor States to the former Soviet Union, with the exception of Russia and Ukraine, is hereby terminated.

Article 4

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

Subject to Articles 11, 12 and 13 of Decision No 2424/88/ECSC, Article 1 of this Decision shall apply for a period of four months, unless the Commission adopts definitive measures before the expiry of that period.

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

Done at Brussels, 12 January 1994.

For the Commission

Leon BRITTAN

Member of the Commission
