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Information and Notices

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I

(Information)

COMMISSION

Interest rate applied by the European Central Bank to its main refinancing operations ⁽¹⁾:**2,02 % on 1 January 2004****Euro exchange rates ⁽²⁾****6 January 2004**

(2004/C 3/01)

1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,2756	LVL	Latvian lats	0,6754
JPY	Japanese yen	135,46	MTL	Maltese lira	0,4314
DKK	Danish krone	7,4474	PLN	Polish zloty	4,6923
GBP	Pound sterling	0,6998	ROL	Romanian leu	41 429
SEK	Swedish krona	9,1278	SIT	Slovenian tolar	237
CHF	Swiss franc	1,5666	SKK	Slovak koruna	40,88
ISK	Iceland króna	88,90	TRL	Turkish lira	1 754 294
NOK	Norwegian krone	8,566	AUD	Australian dollar	1,6539
BGN	Bulgarian lev	1,9558	CAD	Canadian dollar	1,6336
CYP	Cyprus pound	0,58617	HKD	Hong Kong dollar	9,9026
CZK	Czech koruna	32,38	NZD	New Zealand dollar	1,8934
EEK	Estonian kroon	15,6466	SGD	Singapore dollar	2,1657
HUF	Hungarian forint	260,23	KRW	South Korean won	1 514,07
LTL	Lithuanian litas	3,4539	ZAR	South African rand	8,2152

⁽¹⁾ Rate applied to the most recent operation carried out before the indicated day. In the case of a variable rate tender, the interest rate is the marginal rate.

⁽²⁾ Source: reference exchange rate published by the ECB.

Notice of initiation of an examination procedure concerning obstacles to trade within the meaning of Council Regulation (EC) No 3286/94, consisting of trade practices maintained by Brazil in relation to imports of retreaded tyres

(2004/C 3/02)

On 5 November 2003, the Commission received a complaint pursuant to Article 4 of Council Regulation (EC) No 3286/94⁽¹⁾ (hereinafter 'the Regulation').

1. COMPLAINANT

The complaint was lodged by BIPAVER (Bureau International Permanent des Associations de Vendeurs et Rechapeurs de Pneumatiques). BIPAVER is an international trade association representing the interests of manufacturers of retreaded tyres within the EU. It is made up of national associations from Denmark, Finland, Italy, Portugal, Spain, Sweden and the United Kingdom, whose members are manufacturers of retreaded tyres operating in the Members States. BIPAVER lodged the complaint on behalf of several Community retread manufacturers who wish to export retreaded tyres to Brazil.

BIPAVER is an association acting on behalf of Community enterprises (retread manufacturers) within the meaning of Articles 4(1) and 2(6) of the Regulation.

2. PRODUCT

The products concerned are retreaded tyres which are classified in the Combined Nomenclature (CN) under the codes 4012 11, 4012 12, 4012 13 and 4012 19.

The examination which the Commission is initiating may also cover other products which appear to be affected in a similar way to retreaded tyres. These are in particular products in respect of which interested parties that make themselves known within the time limits mentioned below (see Section 8) provide evidence that the alleged practices are applicable.

3. SUBJECT

The complaint concerns a trade barrier allegedly caused by Brazil, which adversely affects Community exports of the products in question to the Brazilian market.

The challenged Brazilian practice is based on Portaria No 8 of 25 September 2000 of the Brazilian Ministry of Development, Industry and International Commerce. According to the complainant, this act bans the importation of retreaded tyres by prohibiting the issuance of import licences for retreaded tyres imported as consumer goods or raw material. Further,

Presidential Decree No 3919 of 14 September 2001 subjects the importation, as well as the marketing, transportation, storage, keeping or keeping in deposit of retreaded imported tyres to a fine of BRL 400 (around EUR 120) per unit.

4. ALLEGATION OF OBSTACLES TO TRADE

The complainant claims that the abovementioned trade measures maintained by Brazil discriminate between imported and domestic like products and that they are in breach of Brazil's obligation under the WTO Agreement, namely Articles III and XI of GATT 1994. The complainant considers as unfounded the Brazilian claims that the measures are justified by reasons of environmental or health protection.

The complainant asserts that the abovementioned penalties do not apply to domestically retreaded tyres, nor is the production of retreaded tyres prohibited in Brazil. Portaria No 133, enacted on 27 September 2001, in fact regulates the production and marketing of retreaded tyres in Brazil, with an exemption for retreaded tyres produced domestically before 1 January 2004. According to the complainant, Portaria No 133 is very similar to UNECE Regulations 108 and 109, two international standards for retreaded tyres. A Mercosur panel established at the request of Uruguay found that the Brazilian measures were incompatible with Mercosur law. In response, Brazil eliminated the ban for retreaded tyres imported from other Mercosur countries by means of Portaria No 2 of 8 March 2002. Presidential Decree No 4592 of 11 February 2003 exempts retreaded tyres imported from other Mercosur countries from the abovementioned financial penalties.

It appears that the Brazilian trade practices could be incompatible with Articles I.1, III.4 and XI.1 of GATT 1994, without being justified under Article XX, and with Articles 2.1, 2.2 and 2.4 of the TBT Agreement. There thus appears to be sufficient *prima facie* evidence of an obstacle to trade within the meaning of Article 2(1) of the Regulation.

5. ALLEGATION OF ADVERSE TRADE EFFECTS

The complainant claims that the challenged Brazilian trade measures have resulted in a significant drop of Community exports. The complainant asserts that, until the introduction of the ban, Community exports amounted to roughly two million units per year and were expected to increase to three million. Community exporters had an estimated share of 25 % of the Brazilian car replacement market prior to the introduction of the ban. The loss of this market share and of the two million sales as a result of the ban accounts for a significant portion of the reduction in overall Community production. Most affected are producers in the United Kingdom, Italy and Spain, who held the largest shares of exports to Brazil.

⁽¹⁾ Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organisation (WTO) (OJ L 349, 31.12.1994, p. 71). Regulation last amended by Regulation (EC) No 356/95 (OJ L 41, 23.2.1995, p. 3).

In particular, the complainant claims that the Brazilian measures have resulted in company closures and job losses. By way of illustration, the complaint refers to three companies which collapsed financially when their exports to Brazil came to a halt, with hundreds of jobs being lost. The complainant also alleges that the Brazilian ban resulted in the reduction of production, profit margins and profits as well as the surge of unit costs for those producers which managed to survive the loss of their exports to Brazil.

The complainant finally stresses the protection which the import ban accords to Brazilian producers of retreaded and new tyres and the threat of further job losses within the Community industry of retreaded tyres.

Under such circumstances, there appears to be *prima facie* evidence of adverse trade effects as defined in Article 2(4) of the Regulation.

6. COMMUNITY INTEREST

The Community has a general interest in maintaining the observance of international trade rules among its trading partners. This is particularly true of the obligations contained in the WTO Agreement, given the amount of trade governed by and the number of countries subject to these rules. This interest applies especially in relation to a large economy and important trading partner such as Brazil. Also, the WTO obligations at issue in the present case are among the core principles of the WTO. The Community would send a wrong signal if it did not investigate into the kind of discrimination alleged in this case, which seems to benefit domestic and Mercosur products.

Further, the alleged adverse trade effects seem to have a considerable impact on those Community producers of retreaded tyres who used to export to Brazil. The economic consequences include the loss of production and employment. The Brazilian export market was very important for the Community industry and would have a considerable growth potential in the absence of the alleged obstacle to trade. It therefore appears essential to safeguard the equal treatment of retreaded tyres from the Community on the Brazilian market by addressing the alleged obstacles to trade.

In view of the above, it is considered to be in the Community's interest to initiate an examination procedure, in accordance with Article 8(1) of the Regulation.

7. PROCEDURE

Having decided, after due consultation of the Advisory Committee established by the Regulation, that there is sufficient evidence to justify initiating an examination procedure for the purpose of considering the legal and factual issues involved, and that this is in the interest of the Community, the Commission has commenced an examination in accordance with Article 8 of the Regulation.

Interested parties may make themselves known and make known their views in writing on specific issues raised by the complaint, providing supporting evidence.

Furthermore, the Commission will hear the parties who so request in writing when they make themselves known, provided that they are fundamentally concerned by the result of the procedure.

This notice is published in accordance with Article 8(1)(a) of the Regulation.

8. TIME LIMIT

Any information relating to the matter and any request for a hearing should reach the Commission not later than 30 days following the date of publication of this notice and should be sent in writing to:

European Commission
Directorate-General for Trade
Mr Ignacio Garcia Bercero, DG Trade D/3
CHAR 9/74
Rue de la Loi/Wetstraat 200
B-1049 Brussels
Fax (32-2) 299 32 64.

Notice of initiation of a partial interim review of the anti-dumping measures applicable to imports of silicon carbide originating in the Ukraine

(2004/C 3/03)

The Commission has received a request for a partial interim review pursuant to Article 11(3) of Council Regulation (EC) No 384/96 ⁽¹⁾, as last amended by Council Regulation (EC) No 1972/2002 ⁽²⁾ ('the basic Regulation').

1. REQUEST FOR REVIEW

The request was lodged by Zaporozhsky Abrasivny Combinat ('the applicant'), an exporter from the Ukraine.

The request is limited in scope to the examination of dumping as far as the applicant is concerned.

2. PRODUCT

The product under review is silicon carbide originating in the Ukraine ('the product concerned'), currently classifiable within CN code 2849 20 00. This CN code is given only for information.

3. EXISTING MEASURES

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 1100/2000 ⁽³⁾ on imports of silicon carbide originating in the Ukraine.

4. GROUNDS FOR THE REVIEW

The request pursuant to Article 11(3) is based on the *prima facie* evidence, provided by the applicant, that the circumstances on the basis of which measures were established have changed and that these changes are of lasting nature.

The applicant alleges, *inter alia*, that the circumstances with regard to market economy status have changed significantly. Furthermore, the applicant has provided evidence showing that a comparison of normal value based on its own cost/domestic prices and its export prices to a third country market comparable to the EU, would lead to a reduction of dumping significantly below the level of the current measure. Therefore, the continued imposition of measures at the existing levels, which were based on the level of dumping previously established, is no longer necessary to offset dumping.

5. PROCEDURE FOR THE DETERMINATION OF DUMPING

Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of a partial

interim review, the Commission hereby initiates a review in accordance with Article 11(3) of the basic Regulation limited in scope to the examination of dumping as far as the applicant is concerned.

The investigation will assess the need for the continuation, removal or amendment of the existing measures in respect of the sole applicant.

(a) Questionnaires

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the applicant and to the authorities of the exporting country concerned. This information and supporting evidence should reach the Commission within the time limit set in point 6(a) of this notice.

(b) Collection of information and holding of hearings

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies and to provide supporting evidence. This information and supporting evidence must reach the Commission within the time limit set in paragraph 6(a)(i) of this notice.

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in paragraph 6(a)(ii) of this notice.

(c) Market economy status

In the event that the applicant provides sufficient evidence showing that it operates under market economy conditions, i.e. that it meets the criteria laid down in Article 2(7)(c) of the basic Regulation, normal value will be determined in accordance with Article 2(7)(b) of the basic Regulation. For this purpose, a duly substantiated claim must be submitted within the specific time limit set in paragraph 6(c) of this notice. The Commission will send a claim form to the applicant as well as to the authorities of the Ukraine.

(d) Selection of the market economy country

In the event that the applicant may not be granted market economy status an appropriate market economy country for the purpose of establishing normal value in respect of the Ukraine will be used. The Commission envisages to use Brazil again for this purpose as was done in the previous investigation. Interested parties are hereby invited to comment on the appropriateness of this country within the specific time limit set in paragraph 6(b) of this notice.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 305, 7.11.2002, p. 1.

⁽³⁾ OJ L 125, 26.5.2000, p. 3.

6. TIME LIMITS

(a) General time limits

- (i) For parties to make themselves known, to submit questionnaire replies and any other information

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views and submit questionnaire replies or any other information within 40 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the aforementioned period

- (ii) Hearings

All interested parties may also apply to be heard by the Commission within the same 40-day time limit.

(b) Specific time limit for the selection of the market economy country

Parties to the investigation may wish to comment on the appropriateness of Brazil which, as mentioned in paragraph 5.1(d) of this notice, is envisaged as a market-economy country for the purpose of establishing normal value in respect of the Ukraine. These comments must reach the Commission within 10 days of the date of publication of this notice in the *Official Journal of the European Union*.

(c) Specific time limit for submission of claims for market economy status

Duly substantiated claims for market economy status, as mentioned in paragraph 5.1(c) of this notice, must reach the

Commission within 21 days of the date of publication of this notice in the *Official Journal of the European Union*.

7. WRITTEN SUBMISSIONS, QUESTIONNAIRE REPLIES AND CORRESPONDENCE

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified and must indicate the name, address, e-mail address, telephone and fax, and/or telex numbers of the interested party).

Commission address for correspondence:

European Commission
Directorate General for Trade
Directorate B
Office: J-79 5/16
B-1049 Brussels
Fax (32-2) 295 65 05
Telex COMEU B 21877

8. NON-COOPERATION

In cases in which any interested party refuses access to or otherwise does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 18 of the basic Regulation, of the facts available. If an interested party does not cooperate, or cooperates only partially, and use of the best facts available is made, the result may be less favourable than if it had cooperated.