COMMISSION

COMMISSION DECISION

of 13 June 1992

accepting an undertaking given in connection with the review proceeding of the anti-dumping measure concerning imports of container corner fittings of worked cast steel originating in Austria and terminating the investigation

(92/313/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 Articles 10, 14 and 15 thereof,

After consultation within the Advisory Committee as provided for by the above Regulation,

Whereas,

A. PROCEDURE

(1) In September 1985, the Commission, by Decision 85/443/EEC [2], accepted an undertaking given in connection with the anti-dumping investigation concerning imports of container corner fittings of worked cast steel originating in Austria and terminated that investigation.

(2) Following the publication in March 1990 [3] of a notice of the impending expiry of the measure in force, the Commission received a request for a review lodged by George Blair Ltd of Newcastle (UK), representing a major part of Community production of the product under consideration. The complaint contained evidence showing that the expiry of the measure would lead again to injury or threat of injury, and this evidence was considered sufficient to justify the initiation of an investigation.

In a notice published in the *Official Journal of the European Communities* [4], the Commission accordingly announced its intention to carry out a review of the anti-dumping measure in force.

Subsequently, in a notice published in the *Official Journal of the European Communities* [5], the Commission announced a review of the anti-dumping measure in force.

(3) The Commission officially notified the Austrian producer, the importers known to be concerned, the representatives of the exporting country and the complainants.

It called on the parties concerned to reply to the questionnaires sent to them, and gave them the opportunity to make their views known in writing and to request a hearing.

(4) All Community producers replied to the questionnaires and made their views known in writing. The representatives of the complainant requested and were granted hearings by the Commission.

(5) The Austrian producer replied to the questionnaire and made its views known in writing.

(6) None of the 11 companies known as importers of container corner fittings submitted a full reply to the questionnaires sent out by the Commission.

However, a company not known at the outset of the investigation, Maersk Container Industri AS, Tinglev, Denmark, which was recently established with the objective of producing and selling steel

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 256, 27. 9. 1985, p. 44.
[3] OJ No C 82, 31. 3. 1990, p. 11.
[4] OJ No C 205, 17. 8. 1990, p. 20.
[5] OJ No C 310, 11. 12. 1990, p. 7.

containers for seafreight, submitted a memorandum. The arguments made by this company were taken into consideration in the course of the investigation.

(7) Using as a source the parties which had agreed to cooperate with it, the Commission sought and verified all the information it deemed necessary for the purpose of determining dumping, injury and the threat of injury and carried out inspections at the premises of:

— *Community proudcers:*

— G. Blair Ltd, Newcastle, United Kingdom,

— Fundiciones Especiales Zaragoza SA, Zaragoza, Spain,

— Thome Cromback, Nouzonville, France;

— *Producer in Austria:*

Maschinenfabrik Liezen GmbH, Liezen, Austria (previously known as Voest Alpine AG, Liezen).

(8) The Austrian producer was provided with information on the essential facts and considerations which would serve as the basis for the recommendation to impose definitive measures. They were also given time to submit their comments following the communication of this information. Their comments were examined and, where appropriate, taken into account in the Commission's conclusions.

(9) The investigation into dumping covered the period from 1 January to 30 September 1990.

This proceeding overran the one-year period laid down in Article 7 (9) (a) of Regulation (EEC) No 2423/88 because of the duration of the exchanges of information with the Austrian producer following the disclosure mentioned in recital 8.

B. PRODUCT CONCERNED, LIKE PRODUCT, COMMUNITY INDUSTRY

(10) The product concerned is fitted to containers which are used for shipping goods door-to-door. The fittings act as security points and lifting locations and there are eight such fittings, known as a set, for each container. They fall within CN code ex 7325 99 90.

(11) Container corner fittings are required to conform to certain standards, mainly set up by the International Standards Organization (ISO) but sometimes established for railroad transport by the 'Union Internationale des Chemins de fer' and known as 'UIC' standards.

During the reference period, the UIC types represented only about 1 % of the Austrian producer's deliveries on the Community market. Exports of UIC type container corner fittings were therefore disregarded and the investigation concentrated on ISO types.

(12) The Community industry manufactures container corner fittings to the same ISO standards and which have the same physical characteristics and uses as those imported into the Community from Austria.

(13) The Commission therefore considered that the products manufactured by Community producers should be considered to be like products within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 to those exported from Austria.

(14) The Company having requested the review, together with the two other Community producers who also cooperated with the Commission investigation, account for 100 % of the total Community output of container corner fittings. The Commission therefore considerd that these three Community producers constituted the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

C. DUMPING

1. Methodology of the investigation

(15) As indicated in recital 11, container corner fittings, the subject of the investigation, conform to ISO standards, which provide specifications for several models, with slight differences having an impact on the weight of each corner.

Therefore, in order to avoid difficulties which may have arisen from weight differences between ISO models (mainly 'standard model' of 10-11 kg/piece and 'Italian model' of 11-12,30 kg/piece) all dumping calculations were based on prices or costs per kilogram, as this method appeared to be the most relevant in the case of products manufactured in a foundry.

2. Normal value

(16) In no case did the volume of sales of the like product on the exporter's domestic market exceed the threshold of 5 % of the volume of exports of the product to the Community, set by the Commission in previous cases. Domestic sales were therefore considered unrepresentative and normal value was based on a constructed value determined by adding cost of production and a reasonable margin of profit, in accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88.

(17) The costs of production were computed on the basis of all costs, in the ordinary course of trade, both fixed and variable, in the country of origin, of materials and manufacture, plus a reasonable amount for selling, administrative and other general expenses.

(18) For the purpose of calculating the amount for selling, administrative and other general expenses, in accordance with the provisions of Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, it appeared that the level of expenses incurred by the Austrian producer on its sales of the like product on its domestic market could not be taken into account because these sales did not reach 5 % of export sales to the Community and thus were unrepresentative.

As data concerning the expenses incurred by other producers in the country of origin were unavailable, the Commission would have considered appropriate to refer to the sales made by the Austrian producer in the same business sector, i.e. the foundry division.

However, the Austrian producer claimed that these expenses should be allocated in a specific way between the different divisions of the company. In the absence of supporting evidence justifying such allocation, the Commission considered that the most reasonable basis, within the meaning of Article 2 (3) (b) (ii) *in fine* of Regulation (EEC) No 2423/88, for the purpose of calculating the selling, administrative and other general expenses, was to refer to the total amount of these expenses incurred by the Austrian producer and to make a distribution in proportion to the turnover, as provided for by Article 2 (11) of Regulation (EEC) No 2423/88.

A profit margin of 6 % calculated on the turnover was added to these costs. This margin, which corresponds to a slight increase from 5 % used in the previous investigation, was considered to be reasonable, given the peculiarities and investment requirements of the sector concerned, considered in the light of its current situation.

3. Export price

(19) All export transactions to the Community were made to independent buyers. Export prices were therefore determined on the basis of the prices actually paid or payable for the products sold for export to the Community. For this purpose, about 98 % of all transactions were taken into account.

4. Comparison

(20) The comparison between normal value and export prices was made at ex-factory level on a transaction by transaction basis. For the purpose of ensuring a fair comparison, as provided for by Article 2 (9) and (10) of Regulation (EEC) No 2423/88, due allowance in the form of adjustments was made for the differences affecting price comparability.

Such adjustments were made, where applicable, either to normal value or export price, for credit, commissions, transport and other ancillary costs on the basis of the information verified at the premises of the Austrian producer Machinenfabrik Liezen.

5. Dumping margin

(21) The above examination of the facts shows the persistence of dumping in respect of exports made by Maschinenfabrik Leizen, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

The margins found vary slightly according to the importing Member State, the weighted average dumping margin being in excess of 20 % of the free at Community frontier value, uncleared through customs.

D. INJURY

(22) In the case under consideration, the Commission's task was to determine whether the expiry of the measures in force would lead again to injury or threat of injury.

I. Current situation

1. *Consumption on the Community market*

(23) Between 1987 and the investigation period the total estimated consumption in the Community of the product under investigation increased by 164 %.

2. *Volume and price of imports. Market share of dumped imports*

(24) Between 1987 and the end of 1990, the total wieght of imports from Austria, which for reasons of confidentiality is based on Eurostat figures, rose from 986 tonnes to 3 615 tonnes, i.e. an increase of 266 %. During the same period, declared import values only rose by 248 %, which means a decrease in unit prices which was established at 4,8 %. The confidential data provided by the Austrian producer which cooperated in the investigation confirmed these trends.

(25) The Austrian producer whose market share was already substantial in 1987 has doubled it at the end of the reference period.

3. *Situation of the Community industry*

(a) Community production and capacity utilization

(26) Between 1987 and the reference period, Community industry's production increased by 62 %. However, this increase must be considered in the light of a demand which expanded by 164 % during this period. With regard to capacity utilization, a slight improvement was noted.

(b) Market share

(27) Although sales of Community industry rose by 90,5 % between 1987 and the reference period, the increase in demand meant that the Community industry lost 28 % of the Community market during that period.

(c) Prices

(28) For the purposes of calculating whether undercutting had occurred, the Austrian sales prices of ISO type container corner fittings were compared with the sales prices of Community industry's like products on the German, Italian and UK markets (these markets representing 95 % of the Austrian company's total volume of sales in the Community). The same level of trade was respected in all cases. The comparison was made at the delivered, customs cleared stage for the Austrian sales and at the delivered stage for the products sold by the Community industry.

The weighted average level of price undercutting was found to be 6,3 %. No violation of the undertaking in force has, however, been established.

(d) Profits

(29) Following the imposition of the measure, the Community industry's overall profitability slightly improved in the period 1987 to 1989. However, as the starting point was very low in the sector of container corner fittings and due to the deterioration noted since 1990, all Community manufacturers sold at a loss during the reference period.

4. *Conclusion*

(30) The Commission accordingly concluded, on the basis of the above, that the situation of the Community industry is relatively weak. In particular, its market share sharply decreased and its activity in the sector of container corner fittings remained unprofitable. While the existing measure had some beneficial effect for the Community industry, it appears that it had only limited the impact of dumping and that the injury suffered through the effects of dumping would have been even more severe in its absence.

II. Possible recurrence of Injury

(31) In order, in these circumstances, to forecast the effect of the expiry of the anti-dumping measure, the Commission considered the following points.

Despite the measure currently in force, the Community industry's situation remained precarious. In such a context, it can be expected that the expiry of the measure would even worsen that situation. Indeed, it can be forecasted that without measure the exporter would even decrease further its prices in order to increase its market share in the Community at the expense of the Community industry. Such a reduced volume of sales would increase further the Community industry's costs and thus increase its losses.

(32) In these circumstances, the Commission considered that if the measure was allowed to lapse, this would lead to further material injury for the community industry.

E. COMMUNITY INTEREST

(33) In considering the Community interest, the Commission has taken account of the interest of the Community container corner fittings industry, the users and the final consumers of the end product.

In the absence of measures, a continuation of the trend observed would lead to the most negative consequences for the Community industry concerned and endanger its short-term viability. The loss of this industry would have serious consequences from the point of view of employment and investment expenditure. It is in the interest of the Community that such consequences do not occur and that sufficiently diverse sources of supply be maintained within the Community.

(34) As far as the purchasers of container corner fittings and final consumers of containers are concerned, it may be argued that they could derive some benefit from buying low-priced container corner fittings.

Any such benefit, however, would be minimal for the end users, since the product in question accounts for only a tiny fraction of the final price of the products of which it forms part.

(35) Having balanced the above arguments, the Commission concluded that the Community's interest lies in maintaining defensive measures against imports at dumped prices of ISO type container corner fittings.

F. UNDERTAKING

(36) After the disclosure of its findings by the Commission, the Austrian producer offered a price undertaking concerning its exports to the Community of ISO type container corner fitting of worked cast steel.

The effect of the said undertaking will be to increase export prices to the Community to the level which the Commission considered sufficient to eliminate injury, by allowing the Community producers to apply selling prices which eliminate the losses and provide them with an adequate return. The consequent and necessary price increase of the Austrian producer in no case exceeds the dumping margin found in the investigation.

In these circumstances, the undertaking offered is considered acceptable and the investigation may, therefore, the terminated without imposition of anti-dumping duties.

(37) Should this undertaking not be complied with or be withdrawn by the exporter concerned, the Commission could, in accordance with Article 10 (6) of Regulation (EEC) No 2423/88, immediately impose a provisional duty on the basis of the results and conclusions of the investigation set out in recitals 10 to 35.

(38) No objection to this course was raised in the Advisory Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The undertaking offered by Maschinenfabrik Liezen GmbH, Liezen, Austria, in connection with the review proceeding of the anti-dumping measure concerning imports of container corner fittings of worked cast steel falling within CN code ex 7325 99 90, originating in Austria, is hereby accepted.

Article 2

The anti-dumping investigation in connection with the review proceeding referred to in Article 1 is hereby terminated.

Done at Brussels, 13 June 1992.

For the Commission

Frans ANDRIESSEN

Vice-President