COMMISSION REGULATION (EEC) No 2019/80

of 28 July 1980

imposing a provisional countervailing duty on certain seamless tubes of non-alloy steels originating in Spain

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), and in particular Article 11 thereof,

After hearing the opinion expressed by the Advisory Committee set up under that Regulation,

Whereas in August 1979 the Commission received a complaint lodged by the Comité de Liaison de l'Industrie du Tube d'Acier de la Communauté Européenne, on behalf of the German and UK producers of seamless steel tubes, whose collective output constitutes the major part of the total Community production of the product in question ; whereas the complaint contained evidence on the one hand of dumping and subsidization in respect of seamless steel tubes of non-alloy steels, falling within NIMEXE codes 73.18-13, 23, 27, 28, 72 and 74, originating in Spain and on the other hand of material injury resulting therefrom ;

Whereas, since there was sufficient evidence to justify initiating a proceeding, the Commission accordingly announced by a notice published in the *Official Journal of the European Communities* (2) the initiation of a proceeding concerning imports into the Community of seamless steel tubes, falling within the NIMEXE codes in question and originating in Spain, and commenced an investigation of the matter at Community level ;

Whereas the Commission officially so advised the exporters and importers known to be concerned, as well as the representatives of the exporting country ;

Whereas the Commission has given the parties directly concerned the opportunity to make known their views in writing and to be heard orally, and to meet so that opposing views might be presented and rebuttal arguments put forward ;

Whereas the Commission received detailed written submissions from the exporting parties concerned, as well as the German agent of two of the firms, and granted them an oral hearing ; whereas some of the importers concerned submitted their point of view in writing, but did not request oral hearings ;

Whereas, in order to arrive at a preliminary assessment of the subsidy and injury, the Commission addressed in December 1979 a formal request for information to the Spanish authorities and later carried out inspections at the premises in Spain of the various firms involved in the production and export of the product in question, namely : Babcock and Wilcox Española SA (Bilbao), Tubos Reunidos SA (Bilbao), Tubexport (Bilbao), which acts as the joint export company for the two former firms, and Tubacex Comercial SA (Bilbao), which exports material produced by Tubacex SA (Llodio, Alva) ; whereas the Commission also carried out inspections at the premises of the major German and UK firms and associations represented by the complainant, namely : in Germany, Mannesmann Röhren-Werke AG (Düsseldorf) , Eisenwerkgesellschaft Maximilianshütte mbH (Sülzbach-Rosenberg), Neunkircher Eisenwerk AG (Homburg), and the Stahlrohrverband eV (Düsseldorf) ; in the United Kingdom, British Steel Corporation Tubes Division (Corby, Northamptonshire), TI Tube Division Services Ltd (Birmingham), and TI Weldless Ltd (Wolverhampton) ; whereas all the importers known to be concerned are stockholders ; whereas the competition between Spanish and Community producers takes place at the level of sale to stockholders, with the result that the latters' resale prices and intermediate costs are not relevant for the purpose of determining injury ; whereas in these circumstances the Commission has not felt it essential at this preliminary stage to carry out any inspection at the premises of these importers ;

Whereas, with respect to the determination of the amount of the subsidy, the Spanish authorities supplied no information in response to the above-mentioned formal request from the Commission, despite a further request made by the Commission in February 1980 ; whereas preliminary findings have therefore been made on the basis of the facts available ; whereas these consist principally of various memoranda and calculations submitted on a confidential basis by one of the complainants ;

Whereas, according to this information, tube production in Spain incurs liability to pay a cascade turnover tax, which is levied on every transaction involving the purchase of goods or services (other than labour) ;

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No C 264, 19. 10. 1979, p. 2.

Whereas, on export of the finished tube, the Spanish exporters receive a tax rebate currently equal to 14·5 % of the export price, which according to the Spanish authorities is destined to offset the indirect taxes levied on the finished product and on all prior transactions involved in its production ;

Whereas, after examining the application of the Spanish system of indirect taxation to seamless steel tubes and the input structure of this product, the Commission has concluded that part of this tax rebate for seamless steel tubes, equal to 10·15 % of the export price, cannot be regarded as a non-countervailable export rebate ;

Whereas, with regard to the injury caused to the Community industry, the evidence available to the Commission shows that imports into the Community of seamless steel tubes from Spain, falling within NIMEXE codes 73.18-13, 23, 27, 28, 72 and 74, rose from 32 345 tonnes in 1978 to 23 469 tonnes in the first half of 1979, an increase on an annual basis of 45 % ; whereas for Germany the level rose from 20 280 tonnes in 1978 to 15 017 tonnes in the first half of 1979, an increase on an annual basis of 48 % ; whereas the analogous figures for the United Kingdom were, respectively, 1 918 tonnes and 4 111 tonnes, an increase on an annual basis of 329 % ; whereas, for the United Kingdom market, comparable statistics are not available for earlier years ; whereas, for the German market, the figures for earlier years were : 955 tonnes in 1975, 4 122 tonnes in 1976 and 6 459 tonnes in 1977 ;

Whereas the share of the market held by imports from Spain has risen progressively since 1975, and in particular since 1978 ; whereas in Germany, this share stood at 0·1 % in 1975, 2·7 % in 1978 and 7·3 % by October 1979 ; whereas in the United Kingdom the share stood at 1·0 % in 1975, 1·5 % in 1978 and 6·3 % in the second quarter of 1979 ;

Whereas the prices of the imported product in question have substantially undercut the prices of like material produced by Community tubemakers ; whereas, for example, in October 1979 Spanish seamless steel tube of the type covered by the investigation was being sold to stockholders in Germany at prices up to 40 % below the prices then being charged for similar tube by German mills ; whereas in the United Kingdom Spanish material was at that time being sold at prices up to 38 % below the prices charged by United Kingdom mills ;

Whereas the consequent impact on the Community industry takes the form principally of a loss of market share, and of a depression of the prices achieved by Community producers ;

Whereas, according to the evidence available, the German producers lost about 4·5 % of their domestic market to the Spanish exporters between 1978 and October 1979 by which date the former held only 55 % of that market ; whereas the United Kingdom producers lost between 3·4 % and 5·4 % of their domestic market to the Spanish exporters between 1978 and 1979, and held only 48 % of that market in the first half of 1979 ;

Whereas the output of the type of tube in question from Community mills in 1979 is estimated to be from 6 % to 21 % lower than in 1978 ; whereas for the month of October 1979 certain Community mills had an ouput which was between 22 % and 45 % below the average monthly output for 1978, and which cannot be attributed to normal seasonal fluctuations ;

Whereas this reduced output has led in most cases to reductions in the number of shifts worked, or in short-time working, and has in some cases led to a reduction in the numbers employed ;

Whereas in Germany the net prices for the product in question achieved by domestic producers in the first quarter of 1980 were only 87 % of those realized in the first quarter of 1979 for tube of normal wall thickness, and only 83 % of those realized in the earlier period for tube of heavy wall thickness ; whereas in the United Kingdom the net prices achieved did not in general rise between October 1978 and October 1979, and fell in some cases for tube of small and medium dimensions ; whereas over this period the general price level in the Community, and in particular the price of energy, rose, with the result that the price depression for the product in question in real terms is estimated to be of the order of 20 % to 25 % in Germany and of 10 % to 20 % in the United Kingdom ;

Whereas the evidence made available to the Commission shows that the net profit margins of Community producers on this type of tube fell sharply in the course of 1979, and that in many cases Community mills made considerable losses on this type of tube ; whereas the evidence shows that this evolution reflects principally the price depression referred to above, and the increase in unit fixed costs associated with a lower level of production ;

Whereas injuries caused by other factors, such as volume and prices of other imports or contraction in demand which, individually or in combination, also adversely affect the Community industry have been

examined ; whereas, for example, German imports of the like product from other sources were 36 339 tonnes in 1978, and 23 247 tonnes in the first half of 1979, an increase on an annual basis of 27·9 %, whereas United Kingdom imports of the like product from other sources were 9 771 tonnes in 1978 and 11 467 tonnes in the first half of 1979, an increase on an annual basis of 134·7 % ; whereas the Commission is informed that this latter increase was largely due to a single large order to a customer who is not a stockholder, and therefore not part of the market on which the Spanish exporters are competing with Community producers ; whereas the Commision has not yet been able to verify the prices of imports from these other sources ; whereas the level of consumption of the product concerned rose, in Germany, from 27 617 tonnes per month in 1978 to 28 207 tonnes per month in the first 10 months of 1979, while in the UK it fell from 10 850 tonnes a month in 1978 to 9 850 tonnes a month in the first half of 1979, which level is, however, still well above the level of 1977 (8 850 tonnes a month) and 1976 (8 650 tonnes a month) ; whereas exports by the complainants to non-member countries appear to be higher in 1979 than in 1978 ; whereas the Commission has taken due account of all these other factors, and has not attributed to the Spanish exports under investigation any injury which may have been caused by these other factors ;

Whereas a preliminary examination of the facts consequently shows the existence of a countervailable export rebate on exports to the Community of the product in question originating in Spain, and there is sufficient evidence of injury resulting from their entry for consumption in the Community ;

Whereas, as regards the question of the existence of dumping, the Commission is continuing its investigation, and will take appropriate measures in due course ;

Whereas, in these circumstances, the interests of the Community call for action against these exports to prevent injury being caused during the proceeding ;

Whereas such action should take the form of a provisional countervailing duty on imports of seamless steel tubes, falling within NIMEXE codes 73.18-13, 23, 27, 28, 72 and 74, originating in Spain ;

Whereas in order to determine the amount of such duty, the Commission considered the provisionally determined amount of the subsidy and the scale of the injury caused ;

Whereas, after comparing the prices charged by Community mills to stockholders in the Community with the prices charged to such stockholders by the Spanish exporters, and after taking into account the costs, profits and losses of Community manufacturers, the Commission has concluded that to eliminate the injury being caused to Community manufacturers would require increases in import prices of not less than the amount of the countervailable export rebate ;

Whereas, accoriding to the information available, the export tax rebate is paid by reference to the fob price where the goods leave Spain by ship, by reference to the price free on rail truck Spanish frontier in the case of goods leaving Spain by rail, and by reference to the ex-works price in the case of goods leaving Spain by road ; whereas no tax rebate is granted in respect of commissions paid to exporters' agents in the Community ; whereas these factors must be taken into account in the determination of the amount of countervailing duty to be levied ;

Whereas the Spanish authorities were informed of the results of the Commission's investigations ; whereas the former took certain temporary measures concerning Spanish exports to the Community of seamless tubes and set up an inter-departmental working group to study possible modifications to the Spanish system of indirect taxation ;

Whereas, however, this study has not so far given rise to results which the Commission, after consultation, considers sufficient to remove the need for protective measures ;

Whereas it is, therefore, appropriate to impose a countervailing duty on exports of the product in question originating in Spain equal to 10·15 % of the relevant price as above, due account being taken of any commission paid,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional countervailing duty is hereby imposed on seamless steel tubes falling within subheadings ex 73.18 A and ex 73.18 C of the Common Customs Tariff, corresponding to NIMEXE codes 73.18-13, 23, 27, 28, 72 and 74, originating in Spain.

2. The amount of the provisional countervailing duty shall be equal to 10·15 % of the export price fob Spanish port of export or free Spanish frontier, as appropriate. Where the importer cannot furnish reasonable evidence of this price, the duty shall be equal to 10·15 % of the value for customs purposes after deduction of a fixed amount of 29·40 EUA per tonne.

3. In the case of shipments to Germany by Tubexport on behalf of Tubos Reunidos SA or Babcock and Wilcox Española SA which are imported by Goosmann GmbH Stahlrohrvertrieb acting as sole agent for the above companies, the duty shall be assessed at 9·85 % of the price referred to in paragraph 1 above where this price includes the commission paid to Goosmann GmbH.

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to payment of a deposit equivalent to the amount of the provisional duty.

5. The provisions in force with regard to customs duties shall apply to the said provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 3017/79, the parties concerned may make known their views, and apply to be heard orally by the Commission, within a month of the entry into force of this Regulation.

Article 3

This Regulation shall enter into force on 1 August 1980.

Without prejudice to Articles 11, 12 and 14 of Regulation (EEC) No 3017/79, this Regulation shall be applicable for four months or until the adoption by the Council of definitive measures, whichever is the earlier.

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

Done at Brussels, 28 July 1980.

For the Commission

Étienne DAVIGNON

Member of the Commission