COUNCIL REGULATION (EEC) No 3072/80

of 27 November 1980

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

THE COUNCIL 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],

Having regard to the proposal submitted by the Commission after consultation with the Advisory Committee set up under Article 6 of Regulation (EEC) No 3017/79,

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] 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, during the preliminary examination of the subsidy aspect the Spanish authorities supplied no information despite two formal requests from the Commission in December 1979 and in February 1980 ; whereas preliminary findings were therefore 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 producers in Spain incur liability to pay a cascade turnover tax, which is levied on every transaction involving the purchase of goods or services (other than labour) ;

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 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 since the preliminary examination of the facts showed the existence of a countervailable subsidy on exports to the Community of the product in question originating in Spain, and there was sufficient evidence of injury resulting from their entry for consumption in the Community and the interests of the Community called for immediate intervention, the Commission, by Regulation (EEC) No 2019/80 [3] imposed a provisional countervailing duty on seamless steel tubes of non-alloy steels falling within NIMEXE codes 73.18-13, 23, 27, 28, 72 and 74, originating in Spain ;

Whereas in the course of the subsequent examination of the matter undertaken after the imposition of the provisional countervailing duty, the interested parties had the opportunity to make known their views in writing to be heard by the Commission and to develop their views orally, to inspect non-confidential information relevant to the defence of their interests and to be informed of the essential facts and considerations on the basis of which it was intended to make a final determination ;

Whereas the exporters concerned and one importer availed themselves of these possibilities by making known their views in writing and orally ;

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(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No C 264, 19. 10. 1979, p. 2.
(3) OJ No L 196, 30. 7. 1980, p. 34.

Whereas the arguments advanced by the exporters showed in particular that the preliminary calculations made by the Commission concerning the input structure of the Spanish tube producers, based on the information then available to the Commission, did not adequately reflect their true situation ; whereas the Commission has taken due account of these arguments in its definitive calculations regarding the export rebate granted in Spain ;

Whereas, in order to arrive at a final assessment of the subsidy, the Commission addressed in October 1980 a formal request to the Spanish authorities for information concerning the incidence of indirect taxation for raw materials physically incorporated ; whereas the Spanish authorities supplied no information in response to the abovementioned request ; whereas the Commission therefore had to base its calculations on the information available from the complainants which shows a tax incidence of 4 % for scrap and 5·25 % for semi-finished products, compared with the figure of 14·5 % used as an assumption in the preliminary determination ;

Whereas the input structure of the three producers concerned is not identical, in particular because one of the firms concerned is fully integrated, while the other two are not, and thus have to buy semi-finished raw materials, with the result that the incidence of indirect taxation for these latter firms is higher than for the first firm thereby entitling them to receive a higher export rebate under the provisions relating to the physical incorporation of products in exported goods ;

Whereas it is, therefore, appropriate to establish a weighted average level of subsidy ;

Whereas on this basis the Commission considers that the Spanish exporters of seamless tubes are entitled to receive an export rebate equal to 2·75 % of the export price, but that the rebate received in excess of this amount, equal to 11·75 % of the export price, cannot be considered to be a non-countervailable export rebate ;

Whereas, with regard to the elements affecting the determination of injury, no new information was received nor further arguments advanced which could have altered that determination ;

Whereas, therefore, the facts as finally established show that, due consideration having been given to the other factors having a bearing on the situation of this industry, the imports in question are causing or threatening to cause material injury to the Community industry concerned ;

Whereas, in these circumstances, the protection of the Community's interests calls for the imposition of a definitive countervailing duty in respect of certain seamless steel tubes of non-alloy steel originating in Spain and for the definitive collection of the amounts secured by way of provisional duty ;

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

Whereas, according 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 amount of the definitive countervailing duty should be fixed at 11·75 % of the relevant export price as above, due account being taken of any commission paid,

HAS ADOPTED THIS REGULATION :

Article 1

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

2. The amount of the definitive countervailing duty shall be equal to 11·75 % 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 11·75 % 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 11·40 % of the price or value referred to in paragraph 2 above where this includes the commission paid to Goosmann GmbH.

The provisions in force with regard to customs duties shall apply to the definitive countervailing duty.

Article 2

The amounts secured by way of provisional duty under Regulation (EEC) No 2019/80, shall be definitively collected.

Article 3

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

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

Done at Brussels, 27 November 1980.

For the Council

The President

J. BARTHEL