COMMISSION REGULATION (EEC) No 1613/83

of 15 June 1983

imposing a provisional anti-dumping duty on imports of unwrought nickel, not alloyed, in the form of cathodes produced by electrolysis, either uncut or cut into squares, originating in the Soviet Union

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], as amended by Regulation (EEC) No 1580/82 [2], and in particular Article 11 thereof,

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

Whereas :

A. Procedure

(1) In December 1982, the Commission received a complaint lodged by the Société metallurgie Le Nickel (SLN), INCO Europe Ltd and Larco, on behalf of British, French and Greek producers whose collective output constitutes the total 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. The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding concerning imports into the Community of unwrought nickel falling within subheading ex 75.01 of the Common Customs Tariff (NIMEXE code ex 75.01-21), originating in the Soviet Union and commenced an investigation. On 7 February 1983, the French Government requested immediate intervention by the Commission in the form of the imposition of a provisional anti-dumping duty on the product concerned. The Commission subsequently decided to refuse this request [4].

(2) The Commission officially advised the exporter and importers known to be concerned and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(3) The sole exporter, all of the producers and some of the importers made their views known in writing and were granted hearings.

(4) Representatives of Raznoimport, the Soviet exporter, requested and were granted the opportunity to meet with representatives of the complainants for the purpose of presenting their opposing views.

(5) Leopold Lazarus Ltd, a trader in the United Kingdom, requested an opportunity to meet the complainants for the purpose of presenting their opposing views. The Commission was prepared to grant this request but the complainants refused to attend a meeting and it was not, therefore, possible to arrange a confrontation.

(6) Submissions were also made by some Community consumers of nickel.

(7) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

— SLN, Paris,

— INCO Europe, London,

— Larco, Athens,

— Raznoimport, London, acting on behalf of Raznoimport, Moscow.

(8) The Commission requested and received detailed written submissions from certain importers and verified the information therein to the extent considered necessary.

(9) The investigation of dumping covered the period January to December 1982.

B. Like product

(10) The Edelstahl Vereinigung in the Federal Republic of Germany submitted the argument that the nickel exported by the Soviet Union and the

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No C 31, 5. 2. 1983, p. 3.
(4) OJ No L 43, 15. 2. 1983, p. 19.

nickel produced by the complainants were not like products. This argument was submitted one month after an already extended deadline for interested parties to make known their point of view and could therefore not be taken into account at this stage of the proceedings.

C. Normal value

(11) In order to establish whether the imports from the Soviet Union were dumped, the Commission had to take account of the fact that that country does not have a market economy and the Commission therefore had to base its determinations on the normal value in a market economy country. In this connection, the complainants had suggested the constructed value of the product in Canada. The exporter and one dealer objected to this suggestion arguing that nickel was an internationally traded commodity whose price was determined in an international terminal market (the London Metal Exchange), which should, therefore, be used for determining the normal value. The Commission was unable to follow this suggestion as it was not in accordance with the criteria laid down in Regulation (EEC) No 3017/79 for determining normal value and as there was reason to doubt whether the London Metal Exchange quotations covered the production costs in market economy countries. No proposal was made as to another analogue country or as to an alternative method of calculating normal value which would be in accordance with Regulation (EEC) No 3017/79.

The Commission is satisfied that in Canada there are no extraordinary differences in production processes and scale of production such as to permit any objection to the choice of that country as analogue. Furthermore, cost of production in Canada has to be considered as reasonable, the Canadian producer being one of the most efficient in the world. The Commission on-the-spot investigation in Canada showed that Canadian domestic prices did not cover all production costs. The Commission therefore concluded that it would be appropriate and not unreasonable to determine normal value on the basis of constructed value in Canada.

D. Export price

(12) Export prices were determined on the basis of the prices actually paid or payable for the products sold for export to the Community.

E. Comparison

(13) In comparing normal value with export prices the Commission took account, where appropriate, of differences affecting price comparability such as quantity discounts, where claims in these areas could be satisfactorily demonstrated. All comparisons were made at ex-works level. The Soviet exporter argued that, unlike nickel from other sources, Soviet nickel was sold in uncut form and that only cut nickel could be sold on the London Metal Exchange. It was claimed that the cost incurred in cutting the nickel affected price comparibilty but no evidence to justify such a claim was submitted in time to be taken into account at this stage of the proceeding.

F. Margins

(14) The above preliminary examination of the facts shows the existence of dumping in respect of Raznoimport, Moscow, USSR, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

These margins vary according to the date of the transaction and the importing Member State, the weighted average margin being 40 %.

G. Injury

(15) With regard to the injury caused by the dumped imports, the evidence available to the Commission shows that imports of nickel into the Community from the Soviet Union increased from 12 585 tonnes in 1981 to 19 894 tonnes in 1982, with a consequent increase in market share held by the Soviet Union from 9 to 16 % in the same period.

(16) The resale prices of these imports undercut the prices of the Community producers during the investigation period from 14 to 23 % and were lower than those required to cover the costs of Community producers and to provide a reasonable profit.

(17) The consequence for the Community industry from 1981 to 1982 was a reduction of 59 % in production, 9 % in employment and 25 % in sales. Market share fell from 38 to 31 %. Prices fell by 10 to 15 %. Company losses accelerated.

(18) The Commission has considered whether injury has been caused by other factors such as the volume and prices of imports made by other suppliers to the Community. In addition to the Soviet Union there are seven other countries who exported more than 4 000 tonnes per annum to the Community in 1982. Price information from official statistics showed that these countries had also been exporting to the Community as low prices during the ivnestigation period. However, the facts available showed that the Soviet Union had been the largest single supplier to the Community in 1981 and 1982 and had also been the price leader in these two years. Soviet exports had undercut the import prices to the Community of the other suppliers by an average margin of 7 % in 1982. For these reasons injury caused by dumped imports from the Soviet Union alone has to be considered as material.

H. Community interest

(19) Some Community processing industries have argued that the introduction of protective measures would not be in the Community interest because it would make them less competitive.

(20) In view of the particularly serious difficulties facing the Community nickel producers and the economic, social and strategic importance of this industry, the Commission has, however, come to the conclusion that it is in the Community's interests that action be taken. In order to prevent further injury being caused during the remainder of the proceeding, this action should take the form of a provisional anti-dumping duty.

(21) In addition, it had to be taken into account that if a duty exceeding the 7 % price undercutting practised by the Soviet Union were imposed the effect might be that the Soviet Union would be displaced from the market without relief to the Community industry as the Soviet exports would be replaced by other low-priced third country suppliers. In these circumstances it is considered to be in the Community's interest that the amount of the duty be limited to 7 %.

(22) A period should be fixed within which the parties concerned may make their views known and request a hearing,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of unwrought nickel, not alloyed, in the form of cathodes produced by electrolysis, either uncut or cut into squares, falling within subheading ex 75.01 of the Common Customs Tariff (NIMEXE code ex 75.01-21), originating in the Soviet Union.

2. The amount of the duty shall be equal to 7 % of the net price, free-at-Community-frontier, before duty.

The free-at-Community-frontier prices shall be net if the conditions of sale provide for payment within 30 days from the date of shipment; they shall be increased or reduced by 1 % for each increase or decrease of one month in the period for payment.

3. The provisions in force concerning customs duties shall apply for the application of the duty.

4. The release for free circulation in the Community of the products 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 Regulation (EEC) No 3017/79, the parties concerned may make known their views and apply to be heard by the Commission within one month of the entry into force of this Regulation.

Article 3

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

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 3017/79, it shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 15 June 1983.

For the Commission

Wilhelm HAFERKAMP

Vice-President