COUNCIL REGULATION (EEC) No 2907/83

of 17 October 1983

terminating the anti-dumping proceeding concerning 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 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), as amended by Regulation (EEC) No 1580/82 (2), and in particular Article 9 thereof,

Having regard to the proposal submitted by the Commission after consultations within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. Provisional action

(1) The Commission, by Regulation (EEC) No 1613/83 (3) imposed 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.

B. Subsequent procedures

(2) Following the imposition of the provisional anti-dumping duty the exporter, V/O Raznoimport, and some Community consumers, the Deutscher Gießereiverband and the Edelstahl Vereinigung eV, requested, and were granted, an opportunity to be heard by the Commission.

The exporter and those consumers also presented written submissions making known their views on the duty.

(3) Raznoimport requested the Commission to take account of alleged upward price movemens in the nickel market by updating the original investigation period which covered January to December 1982. The Commission extended its investigation to cover not only 1982 but also the first five months of 1983.

C. Like product

(4) The Edelstahl Vereinigung argued that the nickel originating in the Soviet Union and the nickel produced by the complainants were not like products. The nickel produced by Inco Europe, UK, and SLN, France, is of a purity of 99 % plus, as is the nickel originating in the Soviet Union. Each is almost completely interchangeable in application with the other and therefore they have to be considered as being like products within the meaning of Regulation (EEC) No 3017/79. Larco, Greece, produces ferro-nickel, a nickel compound which, for the purposes of definitive action, was not considered by the Commission to be a like product and was therefore excluded from the Commission's consideration on injury.

D. Dumping

(5) For the imposition of the provisional duty, the Commission had determined that there was dumping in respect of nickel originating in the Soviet Union, the margins varying according to the date of the transaction and the importing Member State, the weighted average margin being 40 %.

(6) In establishing the normal value, the Commission had to take account of the fact that the Soviet Union does not have a market economy and that, therefore, in accordance with Regulation (EEC) No 3017/79, normal value should be determined with reference to prices or costs of a producer or producers in a market economy country. In this connection the Commission based its calculation of normal value on the constructed value of the like product of Falconbridge Ltd, an independent producer in Canada, and set out its reasons for so doing in recital 11 of Regulation (EEC) No 1613/83. There is no reason to change the preliminary determination in this respect.

(7) No proposal was made by any interested party as to another analogue country.

(8) It was confirmed with the Canadian producer that the constructed value had not altered in the first five months of 1983.

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No L 159, 17. 6. 1983, p. 43.

(9) Export prices for the whole of the updated investigation period were determined on the basis of the prices actually paid or payable, for exports of the product to the Community.

(10) The Soviet exporter continued to claim that a price allowance should be made for the alleged fact that Soviet nickel was sold in uncut form and that the costs in cutting the nickel to allow it to be sold on the London Metal Exchange affected price comparability. In spite of several requests by the Commission to the exporter for specific and objective evidence in substantiation of that claim, no such evidence was submitted.

The exporter's representative finally stated that no such evidence would be submitted within the deadline and the Commission was consequently unable to allow the claim. The exporter also failed to submit substantiated details of its cif costs which were consequently calculated by the Commission on the evidence available and not disputed by the exporter.

(11) All comparisons of the normal value with export prices were made at ex-works level.

The comparison of normal value with export prices over the extended investigation period showed the existence of dumping in respect of nickel originating in the Soviet Union. The margin of dumping being equal to the amount by which the normal value as established exceeded the price for export to the Community.

This margin varied according to the date of transaction, the weighted average margin being 52 %.

E. Injury

(12) More detailed and updated evidence is now available to the Commission concerning injury. This 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 and reached an estimated 4 720 tonnes in the first five months of 1983 with a consequent increase in market share held by the Soviet Union from 9 % in 1981 to 15 % in 1982. Indications given by the Soviet exporter were that in 1983 the same quantities would be exported to the Community as in 1982.

(13) During 1982 the resale prices of Soviet nickel in the Community undercut the prices of the Community producers from 14 to 23 % and were lower than those required to cover costs of Community producers and to provide a reasonable profit.

No evidence was found that the prices of Soviet nickel in the Community undercut the prices of Community producers in the first five months of 1983, though Community producers' prices remained at a very depressed level.

(14) Production of the Community industry fell by 56 % between 1981 and 1982. Production during the first five months of 1983 showed some increase but remained below the level of 1981. The capacity utilization of the companies concerned decreased by more than 40 % from 1981 to 1982, recovered in the first five months of 1983 for one company to a level slightly above the 1981 level but decreased further to a very low level for the second company. Domestic sales of Community producers decreased by 28 % from 1981 to 1982 and further decreased in the first five months of 1983.

(15) Community producers lost 4 % of the market from 1981 to 1982 and experienced a further loss of market share in the first four months of 1983. Their weighted average prices also decreased from 6 to 36 % in the same period. The companies' losses were higher in 1982 than in 1981 and the rate of loss increased further in 1983. Investments decreased over the last three years. The numbers employed in the Community industry decreased by 22 % between 1981 and 1982 and continued to decrease in 1983.

(16) The Soviet exporter claimed that there was no substantial Community industry and that the Commission had taken account of extra-Community production in its provisional assessment of injury. That claim could not be accepted since the assessment of injury was based on production of the established Community industry in the Community.

(17) 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 its provisional determination the Commission had noted that official statistics 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 those two years. Soviet exports had undercut the average export prices to the Community of the other suppliers by a margin of 7 % in 1982.

It was also noted that, in addition to the Soviet Union, there were seven other countries who exported more than 4 000 tonnes to the Community in 1982.

However, in re-examining the situation for the extended investigation period the Commission establishd that, in spite of the fact that Soviet prices had continued to decline in the first five months of 1983 from their levels in 1982, those of other supplying countries had declined even further with the result that, according to official statistics, the Soviet Union was undercut by four other third countries. Soviet exports no longer undercut the export prices to the Community of the other suppliers as they did in 1982 but exceeded the average price of all third country imports by a margin of 16 %.

In these circumstances, which have become clear only since the imposition of the provisional duty, it is clear that it is impossible to isolate the injury caused by USSR exports from the injury caused by other high-volume, low-priced exports of nickel to the Community. Therefore, the imposition of an anti-dumping duty against imports originating in the USSR alone is unjustified.

F. Conclusion

(18) The anti-dumping proceeding concerning 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, should be terminated and the security lodged for the amount of the provisional duty should be released.

(19) One Member State raised objections to this course in the Advisory Committee,

HAS ADOPTED THIS REGULATION :

Article 1

The anti-dumping proceeding concerning 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, falling within heading No ex 75.01 of the Common Customs Tariff and corresponding to NIMEXE code ex 75.01-21, is hereby terminated.

Article 2

The security lodged for the amount of the provisional duty imposed in accordance with Article 1 of Regulation (EEC) No 1613/83 shall be released.

Article 3

This Regulation shall enter into force on the day of 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 Luxembourg, 17 October 1983.

For the Council

The President

G. VARFIS