I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 341/90

of 5 February 1990

accepting undertakings and imposing a definitive anti-dumping duty on imports of ferro-silicon originating in Iceland, Norway, Sweden, Venezuela or Yugoslavia, except those sold for export to the Community by companies whose undertakings have been accepted

THE COUNCIL 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 Article 10 thereof,

After consultation with the Advisory Committee as provided for in the above Regulation,

Whereas :

A. PROCEDURE

(1) In 1983 Commission Decision 83/93/EEC (2) accepted undertakings offered in connection with the anti-dumping proceeding concerning imports of ferro-silicon originating in Iceland, Norway, Sweden, Venezuela or Yugoslavia and terminated the proceeding.

(2) Following the publication in the *Official Journal of the European Communities* in November 1987 (3) of a notice of expiry of the measures in force, the Commission was asked in December 1987 by the Comité de Liaison des Industries de Ferro-alliages de la Communauté Économique Européenne, on behalf of producers representing almost all Community production, to review the said measures. The complaint contained evidence showing that expiry of the measures would result in further injury or threat of injury, and this evidence was deemed 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 a review of the anti-dumping measures in force.

(3) Because the Commission failed to announce its intention to review the measure before the expiry of the relevant five-year period, an exporter contested the legal basis of the new investigation.

The Commission notes that Article 15 (1) of Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (5) does not lay down any particular formalities for it to announce its intention to review a measure before the expiry of the relevant five-year period ; on the other hand, Article 15 (2) lays down that when anti-dumping or countervailing duties and undertakings lapse, five years after the date on which they entered into force or were last amended, the Commission must publish a notice to that effect.

Since an interested party provided evidence in December 1987 that the expiry of the measures would result in further injury, the Commission, under Article 15 (2) of Regulation (EEC) No 2176/84, was no longer bound to publish a notice announcing the lapse of the measures then in force ; those measures therefore remained in force pending the outcome of the review published in June 1988.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 57, 4. 3. 1983, p. 20.
(3) OJ No C 317, 28. 11. 1987, p. 4.
(4) OJ No C 145, 2. 6. 1988, p. 4.
(5) OJ No L 201, 30. 7. 1984, p. 1.

Regulation (EEC) No 2423/88 did not enter into force until 5 August 1988, i.e. two months after the publication of the notice of review of this proceeding.

The argument that there is no legal basis is therefore without foundation.

(4) The product concerned is ferro-silicon containing between 20 % and 96 % of silicon in weight and falling within CN codes 7202 21 10, 7202 21 90 and 7202 29 00.

(5) The Commission officially advised both the exporters and importers known to be concerned and the complainants and gave the parties concerned an opportunity to make known their views in writing and request a hearing.

(6) All exporters and Community producers and some importers have made known their views in writing.

(7) Some exporters, importers and consumers of ferro-silicon in the Community requested and were granted oral hearings.

(8) Several exporters asked for and were provided with information on the principal facts and considerations which would serve as the basis for recommending the imposition of definitive measures.

(9) The Commission sought and verified all the information it deemed necessary for the purposes of determining dumping, injury and the threat of injury and carried out inspections at the premises of:

— *Community producers:*

Pechiney Electrométallurgie, France,
Industria Elettrica Indel, Italy,
Carburos Metalicos SA, Spain,
Uel-Utilizzazioni, Elettro-Industriali, Italy,
Officine Elettrochimiche Trentine, Italy;

— *Community importers:*

Euroleghe, Italy,
Metallia, Italy;

— *producers/exporters in non-member countries:*

Elkem A/S, Norway,
Bjölvefossen AS, Norway,
Salten Verk, Norway,
Icelandic Alloys, Iceland,
Fesil KS, Norway,
Finnfjord Smelteverk, Norway,
Hafslund Metal AS, Norway,
Ila og Lilleby Smelteverker, Norway,
Vargön Alloys, Sweden,
CVG-Fesilven, Venezuela,
Tovarna Dusika Ruse, Yugoslavia,
Jugohrom, Yugoslavia,
Elektrobosna, Yugoslavia.

(10) The Commission did not carry out inspections on the premises of the following producers in non-member countries:

Bremanger Smelteverk, Norway,
Thamshavn Smelteverk, Norway.

The entire production of these two companies is exported by Elkem A/S, which in its registered office in Oslo provided the data used by the Commission in its calculations.

(11) The Commission received and used information from the following importers:

— Elkem Alloys Ltd, United Kingdom,
— Elkem Srl, Italy,
— Elkem GmbH, Germany,
— Elkem Danemark, Denmark,
— Elkem France, France,
— Intalimet, France,
— Fesil Métaux, France,
— Fesil Legierungshandel, Germany,
— SA des Minérais, Luxembourg,
— Compagnie des Mines et Métaux, Luxembourg.

(12) The Commission received and used information from the Community producer S. K. Trostberg (Germany).

(13) The Commission's dumping investigation lasted for 12 months, from June 1987 to May 1988.

B. DUMPING

Norway and Iceland

(a) *Normal value*

(14) In no case did the volume of sales of a 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. This meant that normal value had to be calculated by other means.

(15) The Norwegian companies suggested using the prices of exports to third countries. The Commission rejected this suggestion since it could not confirm that exports to markets outside the Community were not also being dumped. Moreover, the period covered by the investigation saw a number of international currency fluctuations, which would have made it even more difficult to choose an export market in a third country appropriate for calculating normal value.

(16) For those reasons, normal value was constructed on the basis of fixed and variable raw material and manufacturing costs for the standard product exported to the Community, together with the selling costs, administrative expenditure and other general costs. Since two Norwegian companies accounted for exports to the Community of almost all the ferro-silicon produced in Norway and Iceland during the investigation period by several producers linked with one or other of the exporters, the constructed value was based on weighted average costs of materials and manufacture of each group of producers, including general costs, to which were added the operating costs of each of the exporters. Allowance was also made for a reasonable profit margin of 6 %.

(17) Production costs included the cost of non-reconstitutable waste. In some cases, where producers failed to produce evidence of such costs, their production costs were supplemented by a percentage deemed reasonable in the light of all the financial data verified during the investigation with other producers which did provide such evidence.

(18) Normal value was reduced by the cost of a by-product of the manufacture of ferro-silicon. In view of the large number of producers concerned and the wide range of market prices fetched by the by-product, the Commission felt it was reasonable to calculate an average production cost for the by-product and to deduct it from the production cost of the main product.

(19) In view of the fact that a certain amount of the ferro-silicon produced is of inferior quality, the Commission calculated a percentage of the production cost of the main product representing the cost of the materials used in the lower quality product, which it then subtracted from the overall production cost.

(20) The Commission did not accept the adjustments to production costs requested by several companies in respect of financial revenue from short-term bank investments and/or transferable securities, since such revenue came from financial operations unconnected with the production process. Similarly, the Commission did not consider adjustments for exchange gains or losses, since these were financial operations unconnected with the production process and clearly had no place in a calculation of normal value.

(21) The Norwegian exporters contested the Commission's 6 % profit margin, which they considered excessive in view of their high level of debt, enabling them to make a proper return on their capital with a much lower yield. They also pointed out that a profit margin of only 3 % had been applied in the previous investigation. The Commission rejected their argument since both exporters had enjoyed an improvement in profitability during the investigation period.

In these circumstances there were no grounds for considering such a low margin as a sufficient return in a high-debt situation.

(b) *Export price*

(22) Export prices were determined on the basis of prices actually paid or payable for the products sold for export to the Community. Where exports were made to subsidiary companies in the Community, export prices were calculated on the basis of the price at which the imported product was first sold to an independent purchaser in the Community, making suitable allowance for all costs borne between importation and resale of the products concerned in the investigation, and for a reasonable profit margin of 3 %, calculated on the basis of the profit margin of independent importers of the product.

(c) *Comparison*

(23) In comparing normal value with export prices on a transaction-by-transaction basis, the Commission took account, when appropriate and where sufficient evidence was provided, of differences affecting the comparability of prices; such adjustments were concerned mainly with payment and delivery terms, transport and insurance costs and different forms of presentation and packing.

All comparisons were made at the ex-works stage.

(d) *Dumping margins*

(24) Comparison of normal value with the export prices for the period from June 1987 to May 1988 showed that imports from both Norway and Iceland were being dumped, the dumping margin being equal to the difference between the normal value and the export price to the Community.

On the basis of the free-at-Community frontier price, the weighted average margins were as follows :

— for Fesil KS, Oslo (representing the exports of the Norwegian producers Hafslund, Finnfjord and Ila og Lilleby) : 7,75 %,

— for Elkem AS (representing the exports of the Norwegian producers Salten Verk, Bjölvefossen, Thamshavn and Bremanger and those of the Icelandic producer Icelandic Alloys) : 7,84 %.

Sweden

(a) *Normal value*

(25) Normal value was generally calculated by month on the basis of prices charged on the domestic market by the producer Vargön Alloys AB, which exported to the Community and which provided satisfactory evidence.

(b) *Export prices*

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

(c) *Comparison*

(27) The normal value of the product was compared each month on a transaction-by-transaction basis with the export price of the corresponding type of product. The Commission took account, when appropriate and where sufficient evidence was provided, of the differences mentioned above (recital 23).

All comparisons were made at the ex-works stage.

(d) *Dumping margins*

(28) Comparison of normal value with the export prices for the period from June 1987 to May 1988 showed that imports from Sweden were being dumped, the dumping margin being equal to the difference between the normal value and the export price to the Community.

On the basis of the free-at-Community frontier price, the weighted average margins for Vargön Alloys was 4,12 %.

Venezuela

(a) *Normal value*

(29) Normal value was generally calculated by month on the basis of prices charged to independent customers in normal commercial operations on the domestic market by the producer CVG-Fesilven, which exported to the Community and which provided satisfactory evidence.

(b) *Export prices*

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

(c) *Comparison*

(31) The normal value of the product was compared for the same months on a transaction-by-transaction basis with the export price of the corresponding type of product. The Commission took account, when appropriate and where sufficient evidence was provided, of the differences mentioned above (recital 23).

All comparisons were made at the ex-works stage.

(d) *Dumping margins*

(32) Comparison of normal value with the export prices for the period from June 1987 to May 1988 showed that imports from Venezuela were being dumped, the dumping margin being equal to the difference between the normal value and the export price to the Community.

On the basis of the free-at-Community frontier price, the weighted average margin for CVG-Fesilven was 28,1 %.

Yugoslavia

(a) *Normal value*

(33) Since a product comparable to that sold for export to the Community was sold on the domestic market at prices which in ordinary commercial transactions during the reference period could not have covered the full cost of production given any reasonable allocation of such costs, monthly normal value was determined on the basis of the constructed value of the product concerned, including the fixed and variable raw material and manufacturing costs for the standard product exported to the Community plus sales costs, administrative expenditure and other general costs and a reasonable profit margin of 6 %. In the case of one exporter, who failed to supply information essential to the calculation of the constructed value, monthly normal value was determined on the basis of information available from other Yugoslavian producers/exporters.

(b) *Export prices*

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

(c) *Comparison*

(35) The normal value of the product was compared for the same months on a transaction-by-transaction basis with the export price of the corresponding type of product. The Commission took account, when appropriate and where sufficient evidence was provided, of the differences mentioned above (recital 23).

All comparisons were made at the ex-works stage.

(d) *Dumping margins*

(36) Comparison of normal value with the export prices for the period from June 1987 to May 1988 showed that imports from Yugoslavia were being dumped, the dumping margin being equal to the difference between the normal value and the export price to the Community.

On the basis of the free-at-Community frontier price, the weighted average margin was:

31,5 % for Jugohrom
37,1 % for Elektrobosna
43,9 % for Tovarna Dusika Ruse

C. INJURY

(37) The Commission's task was to determine whether the expiry of the measures in force would result in further injury or threat of injury.

I. CURRENT SITUATION

1. Volume and price of imports

(38) Exports to the Community originating in the five countries concerned have risen slightly since the anti-dumping measures entered into force, from 250 000 tonnes in 1983 to 289 000 tonnes in 1988.

The aggregate market share of those countries rose from 56 % in 1983 to 59 % in 1988. The absolute volume and market share of imports originating in each of the exporting countries separately, except for Venezuela, also rose slightly.

(39) The Commission also established that while during the reference period the resale prices of the imports in question were improved by the anti-dumping measures, many cases were found in which they remained lower than the prices charged by Community producers.

2. Impact on Community industry

The Commission took note of the following information:

(a) Community capacity and production

(40) Between 1983 and 1988 Community production capacity fell from 370 000 tonnes to 230 000 tonnes; in reducing its capacity, the Community industry specialized to some extent in an attempt to limit its losses in the face of the downward pressure exerted by non-member countries on the price of standard products in the Community.

(41) Community production remained virtually unchanged, rising from 180 000 tonnes in 1983 to 184 000 tonnes in 1988.

(b) Market share and consumption

(42) Between 1983 and 1988 the Community industry's market share stabilized around 32 %, while consumption rose from 450 000 tonnes in 1983 to 491 000 tonnes in 1988. The 9 % increase in consumption obviously benefited imports from the countries under investigation.

(c) Prices

(43) In almost all cases, the resale prices charged for dumped imports during the reference period would not have covered the costs of Community producers and allowed them a reasonable profit; in an attempt to preserve their sales and their market share in the Community, the Community producers were forced to sell their products at ever lower prices until they could not even cover their costs.

(d) Profits

(44) The financial performance of the Community industry was negative from 1985 to 1987. Only in 1988 did a number of companies make a small profit. This improvement was modest, despite the upturn in the steel industry, which is the main customer for the product concerned, and despite restructuring, which allowed better, though not satisfactory, capacity utilization. Similarly, the current anti-dumping measures curbed companies' losses at a time when prices were falling.

3. Cumulative effect

(45) In order to establish the impact of dumping on the Community industry, the Commission considered whether or not to examine the cumulative impact of imports originating in the countries under investigation.

It established that the imported products are comparable in terms of physical characteristics and price levels and compete both with one another and with similar Community products.

In view of the above, the Commission concluded that all the imports of ferro-silicon involved should be aggregated. The Council confirms this conclusion.

4. Cause and effect and other factors

(46) The simultaneous increase in imports originating in the five countries in question, the increase in their market share, the pressure caused by the prices of those imports and the worsening situation in the Community industry despite the restructuring undertaken by the Community producers show that these imports are continuing to cause injury to the Community industry despite the current anti-dumping measures.

(47) The Commission examined whether other factors could be behind the injury caused to the Community industry, such as imports of products originating in other non-member countries.

It established that the market share of other non-member countries fell from 12 % in 1983 to 9 % in 1988. Moreover, there was no cause to think that these imports were being dumped.

(48) The Commission accordingly concluded, on the basis of the above, that imports of products from the countries concerned in this proceeding were, by themselves, a cause of major injury to the Community industry concerned, in spite of the current anti-dumping measures. The Council confirms this conclusion.

II. THREAT OF INJURY

(49) The exporting countries concerned have some 800 000 tonnes of production capacity, a large proportion of the world's total.

Their aggregate production is currently around 700 000 tonnes, while their domestic consumption is about 100 000 tonnes. This gap leaves very sizeable quantities available for export.

Moreover, in view of the development of new production units or the enlargement of existing units, particularly in Norway and Venezuela, it is realistic to expect an increase in those two countries' exports to the Community, even if, as certain of their exporters have claimed, this capacity is intended to serve the American and Japanese markets. In addition, current production could be stepped up, if so desired, by making greater use of the present facilities.

(50) As regards the possibility of these countries adopting a more active export policy should the anti-dumping measures expire, it should be borne in mind that the Community is a very attractive market by virtue of its price levels; for most of the exporters concerned it is also a neighbouring market.

(51) In these circumstances, the Commission concluded that to abolish the anti-dumping measures would lead to further material injury for Community producers. The Council confirms this conclusion.

D. COMMUNITY INTEREST

(52) The representatives of Community manufacturing industries and of individual companies argued that it would be against the Community's interest to keep the protective measures in force, since they were weakening competitiveness against imports of finished products originating in non-member countries.

(53) As is the case for any raw material, it is probable that price rises influence the costs of the manufacturing industries. However, no company provided the Commission with convincing evidence of a specific effect of an increase in the price of ferro-silicon on its production costs; nor was evidence supplied of the possible impact of an increase in manufacturers' prices on their total sales. The Commission considers that any impact would be slight, particularly in view of the low percentage of ferro-silicon used in the production of a tonne of steel. Moreover, having heard the representatives of the manufacturing industry, and in view of the fact that current market prices for ferro-silicon are higher than that which would result from the proposed measures (see recital 54), the Commission considers that these measures will not contribute to an actual rise in prices.

Having carefully compared the above arguments and the particularly serious problems faced by the Community ferro-silicon industry which can be attributed to the imports in question, the Commission concluded that it was in the Community's interest to maintain measures against the dumping of ferro-silicon. The Council confirms this conclusion.

E. UNDERTAKINGS

(54) The representatives of the producers/exporters of Norway, Sweden, Iceland, Yugoslavia and Venezuela (namely Elkem A/S, Bjölvefossen AS, Salten Verk, Fesil KS, Finnfjord Smelteverk, Hafslund Metal AS, Ila og Lilleby Smelteverker, Bremanger Smelteverk and Thamshavn Smelteverk in Norway, Icelandic Alloys in Iceland, Vargön Alloys in Sweden, CVG-Fesilven for Venezuela and Tovarna Dusika Ruse, Jugohrom and Elektrobosna in Yugoslavia) were informed of the results of the investigation and presented their comments. They then offered satisfactory price undertakings to bring the revised prices of ferro-silicon exports to the Community up to a level considered sufficient to eliminate the injury established in the investigation in respect of exports originating in Yugoslavia or Venezuela, where the margin of injury was lower than the dumping margins established, and to eliminate dumping in respect of imports originating in Norway, Iceland and Sweden.

In view of the above, and bearing in mind that the circumstances of this case justify the application of such measures, the undertakings offered by the producers/exporters mentioned above are considered acceptable by the Commission and the investigation can accordingly be terminated without the imposition of anti-dumping duties on imports from the abovementioned producers/exporters originating in the five countries concerned. The Council confirms this conclusion.

F. DUTIES

(55) In order not to leave any loopholes and to prevent a recurrence of the events which led to the initiation of this review, an anti-dumping duty should be imposed on imports of products sold to the Community by exporters other than those referred to at 5; this duty would apply to all imports of the products concerned originating in Iceland, Norway, Sweden, Venezuela or Yugoslavia sold for export to the Community by companies other than those whose price undertakings have been accepted.

To facilitate customs clearance the Commission considers that the duty should take the form of an *ad valorem* anti-dumping duty. The Council confirms this conclusion.

(56) The rates of duty to be imposed in respect of the countries concerned have been determined for Norway, Sweden and Iceland on the basis of the highest dumping margin established, because for these three countries the dumping margin was less than the injury threshold, and for Yugoslavia and Venezuela on the basis of the highest established injury caused by imports originating in those countries as for these countries the injury threshold was less than the dumping margin. The injury threshold was calculated on the basis of the most efficient Community producers plus a reasonable profit margin of 6 %. In no case do these amounts exceed the established dumping margins.

Expressed as a percentage of the net free-at-Community-frontier price of the product before duty, the rates of duty are:

— Sweden	4,1 %,
— Norway	7,8 %,
— Iceland	7,8 %,
— Venezuela	27,1 %,
— Yugoslavia	33,2 %,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ferro-silicon falling within CN codes 7202 21 10, 7202 21 90 and 7202 29 00 and originating in Norway, Sweden, Iceland, Yugoslavia or Venezuela.

2. The duty, expressed as a percentage of the net free-at-Community-frontier price of the product before duty, shall be:

— Sweden	4,1 %,
— Norway	7,8 %,
— Iceland	7,8 %,
— Venezuela	27,1 %,
— Yugoslavia	33,2 %.

Free-at-Community-frontier prices shall be net if the conditions of sale provide for payment within 30 days of consignment. They shall be increased or reduced by 1 % for each month's increase or decrease in the period of payment.

3. The duty shall not apply to the products referred to in paragraph 1 produced and/or exported direct to the Community by :

Elkem A/S, Norway,

Bjölvefossen AS, Norway,

Salten Verk, Norway,

Icelandic Alloys, Iceland,

Fesil KS, Norway,

Finnfjord Smelteverk, Norway,

Hafslund Metal AS, Norway,

Thamshavn Smelteverk, Norway,

Ila og Lilleby Smelteverker, Norway,

Eremanger Smelteverk, Norway,

Vargön Alloys, Sweden,

CVG-Fesilven, Venezuela,

Tovarna Dusika Ruse, Yugoslavia,

Jugohrom, Yugoslavia,

Elektrobosna, Yugoslavia

whose price undertakings are accepted.

4. The investigation in connection with the anti-dumping proceeding concerning the companies referred to in paragraph 3 is hereby terminated.

5. The provisions in force concerning customs duties shall apply.

Article 2

This Regulation shall enter into force on the day following that 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 Brussels, 5 February 1990.

For the Council

The President

G. COLLINS