COMMISSION REGULATION (EEC) No 3617/90

of 11 December 1990

imposing a provisional anti-dumping duty on imports of certain welded tubes of iron or non-alloy steel, originating in Turkey or in Venezuela and accepting undertakings offered in connection with such imports

THE COMMISSION 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 Articles 10 and 11 thereof,

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

Whereas :

A. PROCEDURE

(1) In June 1989 the Commission received a complaint lodged by the Liaison Committee of the European Community Steel Tube Industry on behalf of manufacturers representing the majority of the Community production of the products in question.

(2) The complaint contained evidence of dumping and injury caused thereby which was considered sufficient to justify the initiation of a proceeding.

The Commission accordingly announced, by notice published in the *Official Journal of the European Communities* (2) the initiation of an anti-dumping proceeding concerning imports into the Community of certain welded tubes of iron or non-alloy steel falling within CN codes 7306 30 51, 7306 30 59, ex 7306 30 71 and ex 7306 30 79, originating in Turkey and in Venezuela, and commenced an investigation.

(3) The Commission officially so advised the producers/exporters and importers known to the Commission to be concerned, the representatives of the exporting countries and the complainant and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

During the investigation, all exporters concerned and some importers and Community producers asked for an extension for replying to the Commission's questionnaires. Since these requests were considered justified, the Commission extended the set time limits.

(4) Most of the Community producers, some of the importers, two Turkish producers/exporters, a producer and an exporter of Venezuelan products made known their views in writing. Some of them requested and were granted hearings.

(5) No submissions were made by or on behalf of Community purchasers or processors of the products in question.

(6) The Commission sought and verified all information it deemed to be necessary for the purposes of establishing the facts and carried out investigations at the premises of the following :

(a) *EC producers :*

— Mannesmannröhren-Werke AG, Düsseldorf, Germany,

— Saarstahl Völklingen GmbH, Homburg/Saar, Germany,

— IBS (United Tube Mills) SA, Athens, Greece,

— Dalmine SpA, Dalmine, Italy,

— Arbed SA, Luxembourg, Luxembourg,

— British Steel Tubes, Corby, Northants, United Kingdom ;

(b) *non-EC producers/exporters :*

Turkish products :

— Borusan Salipazari, Istanbul, Turkey,

— Yücel Boru Group Kadiköy, Istanbul, Turkey ;

Venezuelan products :

— producer : C.A. Conduven, Caracas, Venezuela,

— exporter : Connectors Inc., Hauppauge, New York, USA ;

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 226, 2. 9. 1989, p. 18.

(c) *EC importers:*

— Leopold Lazarus Ltd, London, United Kingdom,

— Rheinerz, Köln, Germany,

— Coutinho Caro & Co GmbH, Düsseldorf, Germany,

— S.A.L.I.S. SpA, Sassari, Italy.

(7) The Commission gave the different parties known to be concerned the opportunity to inspect all information made available to the Commission. Furthermore, exporters of the product under investigation were informed in conformity with Article 7 (4) of Regulation (EEC) No 2423/88 of the essential facts under consideration, on the basis of which it was intended to impose measures.

(8) The investigation of dumping covered the period from 1 July 1988 to 30 June 1989.

B. DUMPING

(a) Normal value :

(9) *Turkey*

The determination of the normal value varied according to the producer/exporter. For Yücel Boru Group, normal value was established on the basis of the comparable prices actually paid or payable in the ordinary course of trade for the like product on the Turkish market.

Domestic sales considered for the calculation of normal value were those made to independent customers at a profit and in substantial quantities. There were no quality differences between the products sold on the domestic market and those for exportation.

Normal value was established on a monthly weighted average basis for the period July 1988 to March 1989 falling within the investigation period, since Yücel Boru had made no exports to the Community between April 1989 and June 1989 (end of the investigation period).

For Borusan, the investigation by the Commission showed that a substantial part of its sales on the Turkish domestic market were made at a loss during the investigation period. Consequently, it was considered that these sales were not made in the ordinary course of trade.

Thus the normal value was based on a constructed value, determined by adding cost of production, a reasonable amount for selling, administrative and other general expenses and a reasonable margin of profit.

Normal value was calculated for each month of the investigation period.

(10) *Venezuela*

Normal value was based on sales in the ordinary course of trade of comparable like products on the Venezuelan market, net of all discounts and rebates.

Normal values have been established on the basis of the weighted average ex-works sales prices for the tubes concerned.

(b) Export prices :

(11) *Turkey*

The export prices were determined on the basis of the prices actually paid or payable for the like product sold for export to the Community. Export sales taken into consideration were made to independent customers. The products sold for export were identical to those which were considered for the calculation of normal value. No quantity discounts were granted.

(12) *Venezuela*

All exports to the Community were channelled through Connectors Inc. located in New York. Connectors has the function of an export department of Conduven. It handles no other products and is fully controlled by Conduven. Export contracts, invoicing and collection of payments are made by Connectors ; handling and shipping of the goods is carried out by Conduven which ships the goods directly to the Community. The exporting country is therefore Venezuela. The export price was taken to be that invoiced by Connectors since this company merely performed the functions of an export department of Conduven which would otherwise have been carried out in Venezuela.

(c) Comparison

(13) In comparing normal value with export prices the Commission took account, where appropriate and to the extent of evidence available, of differences in conditions and terms of sale, such as transport, insurance, forwarding, handling costs and payment.

All comparisons were made at an ex-works level.

(d) Dumping margins

(14) The above determination of the facts shows the existence of dumping.

The margins of dumping are equal to the amount by which the normal values as established exceed the prices for export to the Community.

The margins of dumping varied according to the producer/exporter and the weighted average margins expressed as a percentage of total cif Community frontier values were as follows :

Yücel Boru Group	18,5 %
Borusan	8,1 %
Conduven	22,1 %

C. INJURY

(a) **Cumulation**

(15) Because tubes originating in Turkey and in Venezuela are alike and in competition on the same markets and distributed through similar channels, the Commission considered that the cumulation of the impacts of the dumped imports from Turkey and Venezuela was appropriate.

(b) **Volume and market share of dumped imports**

(16) Imports from Turkey and Venezuela rose from 5 874 tonnes in 1986 to 52 835 tonnes during the investigation period, corresponding to a rate of 800 % within less than four years.

The corresponding market share increased from 0,8 % to 5,8 % in the same period. In the most affected Member States, the market shares reached 7,6 % in the Federal Republic of Germany and 11,2 % in the United Kingdom.

(c) **Prices**

(17) The evidence available to the Commission also indicates that the prices at which the dumped imports from Turkey and Venezuela were sold in the Community undercut the prices of Community producers during the investigation period significantly.

The weighted average price undercuttings varied according to the producer/exporter and were as follows :

Yücel Boru Group	21,2 %
Borusan	7 %
Conduven	25,8 %

(d) **Impact on the Community industry**

Production and capacities

(18) Between 1986 and the investigation period Community consumption increased by 22,9 %, while production destined for the Community market rose by only 9,8 % over the same period.

The considerable inflow of dumped imports prevented Community producers from benefiting adequately from the increase in consumption. Growth of Community production destined to the Community market lagged distinctly behind the development of consumption.

The effect was particularly pronounced in the German market which absorbed a substantial part of the dumped imports from the two countries concerned during the period 1986 to 1989.

In line with the retarded progress of production in connection with the massive inflow of dumped imports, Community producers could achieve only a moderate improvement of their capacity utilization which on average advanced by 5,5 percentage points from 57 % to 62,5 % between 1986 and the investigation period.

The overall capacity utilization in the Community thus remained unsatisfactory and prevented the Community producers from realizing the advantages of decreasing unit cost which they would have obtained if production had followed the expansion of demand. This effect was particularly detrimental in the light of increasing raw material cost following the sharp increase of prices for flat rolled steel products and zinc.

Prices and profitability

(19) From 1986 to the investigation period, there was a distinct increase in the sales prices of the Community producers. However, the price increases were to a large extent absorbed by the higher purchase prices of the main input materials.

The generally buoyant situation of the steel markets and the strong demand for tubes in the Community also led to an improvement of the financial results of Community producers. However, Community prices remained suppressed and Community producers were prevented from realizing the necessary price increases to recover the rise of raw material cost and to generate satisfactory returns of their sales. Most of the relevant Community producers could not generate positive financial results and have continued to make losses despite the very favourable market situation.

Furthermore, the Commission was informed that a Community producer decided to stop production of welded tubes because of the very low profitability of this sector.

(e) **Causality**

(20) In assessing whether dumped imports from Turkey and Venezuela have caused the injury sustained by the Community industry, the Commission took account of the fact that Community producers should have benefited from the recovery in the steel sector. However, the serious difficulties faced by Community producers in extending production and sales, obtaining better prices to cope with the sharp rise in the purchase of raw material persisted, while the volume of dumped imports offered at prices, which undercut significantly those of the injured industry were sharply increasing. In this respect, the import volume of both Turkey and Venezuela (35 660 tonnes and 17 175 tonnes during the investigation period) and the corresponding market share (3,9 % and 1,9 % during the investigation period) were considered as being significant.

Because the buyer's decisions are mainly orientated by the prices at which the products are offered, the Commission concluded that both exporting countries caused injury.

The Commission also examined whether other factors might have contributed to the injury sustained by the community industry.

For this purpose, the Commission took account that dumped imports of the products concerned originating in Romania and Yugoslavia, which also had a negative impact on the Community market, have been subject to protective measures (1).

The Commission established that imports from other third countries not alleged to be dumped had also moderately progressed during the period under consideration leading to an increase of their market share of 2,6 % which is to be measured against an expansion of the market share of the combined dumped imports from Turkey, Venezuela, Romania and Yugoslavia by 7 % over the same period.

As the Commission had no indication that the slight expansion of the market share of other third countries had been achieved by dumping it was considered that the injury inflicted by the Turkish and Venezuelan exports, taken in isolation, had to be qualified as material.

(f) **Conclusion**

(21) In these circumstances the Commission has concluded that the volume of dumped imports from Turkey and Venezuela and the prices at which they were offered for sale in the Community, taken in isolation, have to be considered as having caused material injury to the Community industry.

D. **COMMUNITY INTEREST**

(22) In assessing whether the interests of the Community call for intervention, the Commission has considered that the iron and steel tube production is an important basic industry in the Community closely linked upstream with the steel industry and is the most important customer for the transformation of primary ECSC steel products. About 15 % of total EEC raw steel production is absorbed by the manufacture of tubes. The sector has gone through a severe restructuring process because of overcapacity. In 1988, the sector employed 74 500 people in the Community as against 123 500 in 1981. Regionally the plants are located in the vicinity of the steel producing centres which are already suffering from employment problems linked to the downturn in the steel industry.

Downstream the sector is an important supplier of all branches of the manufacturing industry. The most important customer groups are mechanical engineering, vehicle building, construction, structural steel works and the energy sector including nuclear. In order to be in a position to manufacture the whole range of products at competitive costs, the industry depends on a reasonable utilization rate of its equipment. This is principally achieved by the production of standard commercial quality tubes which are in direct competition with the dumped products imported from Turkey, Venezuela, Romania and Yugoslavia and account for a major part of the revenue generated by the industry. In view of these facts, it is considered in the Community's interest to maintain a viable and healthy steel tube manufacturing industry.

(23) The Commission also took into account the interests of the users of Turkish and Venezuelan welded tubes and considered that the secondary effects of the necessary price increases in respect of

(1) Notice of initiation, OJ No C 241, 16. 9. 1988, p. 3 ; Commisson Regulation (EEC) No 3074/89, OJ No L 294, 13. 10. 1989, p. 10 ; Council Regulation (EEC) No 868/90, OJ No L 91, 6. 4. 1990, p. 8 ; Commission Decision 90/166/EEC, OJ No L 91, 6. 4. 1990, p. 36.

the output of the main downstream branches mentioned above will be insignificant. No submissions to the contrary were made by or on behalf of Community purchasers or processors of the welded steel tubes concerned.

E. PROTECTIVE MEASURES

(24) Given the serious difficulties facing the Community industry concerned, the Commission has concluded that, in order to maintain the effectiveness of the measures already imposed against dumped imports from Romania and Yugoslavia and to avoid discrimination, action should be taken also against dumped imports from Turkey and Venezuela.

The Commission considers that the situation warrants the imposition of provisional measures at this stage of the proceeding in order to prevent further injury being caused during the remainder of the proceeding.

(25) Having regard to the injury caused, the Commission intended to impose provisional duties at a rate adequate to remove the injury but not exceeding the dumping margins established. Since the injury consists mainly in loss of profitability due to price undercutting, the Commission considered necessary to eliminate price undercutting due to dumping.

Consequently, the duty necessary to remove injury was calculated on the basis of the price undercutting or the dumping margin of each exporter, whichever was the lowest.

F. UNDERTAKINGS

(26) The Turkish and Venezuelan producers/exporters which cooperated during the investigation having been informed of the preliminary findings of the Commission services with regard to dumping and injury have offered price undertakings.

(27) The Yücel Boru Group, which was considered as a single economic entity for the purposes of this investigation, has pointed out that it was composed of two producing companies and one exporting company, which may export in the future under its own separate names. Consequently, price undertakings have been offered in the name of each of these three companies.

(28) The Commission is satisfied that the effect of these undertakings offered by the Turkish and Venezuelan producers/exporters will be an increase of the export prices of the exporters concerned to the extent that the injury will be eliminated in cases where it is lower than the dumping margins and in other cases the dumping margin will be eliminated in full.

Moreover the Commission notes that in case of violation of these price undertakings it can impose immediate provisional duties and the Council can then impose definitive duties based on the facts established in the present investigation, without carrying out new investigations concerning dumping and injury resulting thereform.

G. RESIDUAL DUTIES

(29) In order to cover other companies which did not cooperate during the investigation period and to prevent circumvention, it is considered appropriate to impose provisional anti-dumping duties.

Since the price undercuttings of some exporters exceeded the dumping margin, the rate of these duties should correspond to the highest dumping margin found for each country. It is established at :

18,5 % for Turkey,

22,1 % for Venezuela.

Indeed, it would constitute a bonus for non-cooperation to hold that the duties for these producers/exporters were any lower than the highest anti-dumping duty determined.

H. CONCLUSION

(30) In the light of the above findings, it is considered that the interests of the Community require the imposition of protective measures.

(31) The Commission is of the opinion that the price undertakings offered can be accepted for the producers/exporters concerned and that the investigation against these companies may be terminated.

(32) A provisional duty should be imposed on imports of the product in question originating in Turkey and in Venezuela realized by companies other than these which have offered undertakings.

(33) The Advisory Committee has been consulted with regard to this course of action and has raised no objection to the proposals.

(34) 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 welded tubes, of iron or non-alloy steel, threaded or threadable, zinc coated or not, of circular cross-section, of an external diameter of not more than

168,3 mm, falling within CN codes 7306 30 51, 7306 30 59, ex 7306 30 71 (Taric code : 7306 30 71*90), ex 7306 30 79 (Taric code : 7306 30 79*90), originating in Turkey and Venezuela.

2. The rate of the duty shall be 18,5 % for products originating in Turkey (Taric additional code : 8511) and 22,1 % for products originating in Venezuela (Taric additional code : 8513). The duty shall be calculated on the net price, free-at-Community-frontier, customs uncleared.

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

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

1. Notwithstanding Article 1, the duties shall not apply for the products concerned

— exported directly to the Community by

  — Borusan Birlesik Boru Fabrikalari AS (Taric additional code : 8510),

  — Borusan Ihracat Ithalat Ve Dagitim AS. (Taric additional code : 8510),

  — Yücel Boru Ve Profil Endüstrisi A.S. (Taric additional code : 8510),

  — Cayirova Boru Sanayi Ve Ticaret AS (Taric additional code : 8510),

  — Yücel Boru Ihracat Ithalat Ve Pazarlama AS (Taric additional code : 8510),

— produced by Conduven, Caracas, Venezuela and exported by Connectors, New York, USA (Taric additional code : 8512).

2. The undertakings offered by the companies cited in paragraph 1 are hereby accepted.

3. The investigation against the companies cited in paragraph 1 is hereby terminated.

Article 3

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard by the Commission within one month of the entry into force of this Regulation.

Article 4

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

Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 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, 11 December 1990.

For the Commission

Frans ANDRIESSEN

Vice-President