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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1115/91

of 29 April 1991

imposing definitive anti-dumping duties in connection with the review of anti-dumping measures concerning imports of ferro-silicon originating in Brazil

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,

Having regard to the proposal from the Commission, presented after consultation within the Advisory Committee as provided for in the above Regulation,

Whereas :

A. PROCEDURE

(1) By Regulation (EEC) No 3650/87 [2], the Council imposed a definitive anti-dumping duty on imports of ferro-silicon originating in Brazil. This duty does not apply to the product manufactured and exported by Companhia Brasileira Carbureto de Calcio SA and Electrometalur (currently trading as Rima SA) which were not dumping, nor to Italmagnesio SA, which, when the duty was imposed, offered a price undertaking which was considered acceptable by the Commission.

(2) Commission Regulation (EEC) No 2409/87 [3] and Council Regulation (EEC) No 341/90 [4] imposed measures on imports originating in the Soviet Union, Norway, Sweden, Iceland, Venezuela and Yugoslavia.

(3) In their request for a review lodged in November 1989, the Brazilian producers and/or exporters claimed that they were no longer dumping this product and that the Community industry was therefore no longer suffering material injury connected with the dumping of Brazilian products. The measures adopted in 1987 should therefore be repealed or amended.

(4) Having decided, after consultation, that there was sufficient evidence to justify a review, the Commission began an investigation in accordance with Article 14 of Council Regulation (EEC) No 2423/88. As the Commission has, moreover, reason to believe that the circumstances cited by some Brazilian exporters are equally applicable to other Brazilian producer/exporters, the review was extended to all Brazilian producer/exporters [5].

(5) The Commission officially notified the exporters, Community producers and importers known to be concerned and gave the parties concerned the opportunity to make known their views in writing and to request a hearing.

(6) The Community producers, the exporters and some importers made their views known in writing.

(7) Some exporters and several importers and consumers of ferro-silicon requested and were granted hearings.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 343, 5. 12. 1987, p. 1.
[3] OJ No L 219, 8. 8. 1987, p. 24.
[4] OJ No L 38, 10. 2. 1990, p. 1.
[5] OJ No C 109, 3. 5. 1990, p. 5.

(8) 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 SA, France,
— SKW Trostberg AG, Germany,
— Carburos Metálicos, Spain,
— Industria Elettrica Indel, Italy,
— Utilizzazioni Elettro Industrial (UEI), Italy,

— Community importers:

— Considar Europe SA, Belgium,
— Sogem Rohstoffhandel GmbH, Germany,

— Brazilian producer/exporters:

— Companhia Brasileira Carbureto de Cálcio (CBCC),
— Companhia Italmagnesio SA,
— Companhia Ferroligas da Baía — Ferbasa,
— Companhia Cimento Portland Maringa,
— Companhia Paulista de Ferroligas,
— Companhia Ferroligas Minas Gerais — Minas Ligas,
— Companhia Ferroligas Piracicaba Ltda,
— Companhia Rima Electrometalurgia SA.

(9) The Commission received and used information from the importer Marc Rich, Zug (Switzerland).

(10) All producer/exporters were informed of the principal facts and considerations which would serve as the basis for the recommendation to impose definitive measures. They were also given time to submit their comments following the communication of this information. Their comments were examined and, where appropriate, taken into account in the Commission's conclusions.

(11) The dumping investigation covered the period 1 September 1989 to 30 April 1990.

B. PRODUCT

1. Description of the product

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

2. Like product

(13) The Commission established that the ferro-silicon produced in the Community and that exported from Brazil were like products in all essential physical and technical properties.

C. DUMPING

1. Normal value

(14) In general, normal value was calculated month by month and based on the prices charged on the domestic market by seven Brazilian producers, five of which exported to the Community during the reference period and provided sufficient evidence.

(15) Normal value was also calculated for two Brazilian producers which had not exported to the Community in the reference period. These exporters cooperated fully with the investigation and expressed a desire to export to the Community in the near future.

(16) During the reference period, one Brazilian producer made negligible and unrepresentative domestic sales, averaging a loss. It was therefore necessary to find another method of calculating normal value. Normal value was constructed on the basis of average monthly fixed and variable raw material and manufacturing costs — weighted according to the volume of export production — together with the selling costs, administrative expenditure and general overheads. Allowance was also made for a reasonable profit margin of 6 %.

(17) To offset the inflationary effect of domestic prices in Brazil, normal values were expressed on a monthly basis in US dollars and according to the monthly average exchange rate.

2. Export prices

(18) Export prices — expressed in US dollars — were based on the prices actually paid or payable for products sold for export to the Community. Where exports were made to subsidiary companies in the Community or where there was a compensatory arrangement between the exporter and the importer, export prices were determined on the basis of the price at which the imported product was first sold to an independent purchaser, with due allowance for all costs borne between import and resale of the products concerned and for a reasonable profit margin of 3 %, calculated on the basis of the profit margin of independent importers of the product. All these sales were made before payment of the anti-dumping duty.

3. Comparison

(19) In comparing normal value with the 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 packaging.

(20) Costs resulting from non-recoverable waste, incurred at each loading and unloading in the export process, were also deducted from the export prices. Where producers had failed to quantify such costs, a percentage deemed reasonable in the light of all the data verified during the investigation with other producers which did provide such evidence was deducted from the selling price to obtain the net ex-works price of exports.

(21) Given Brazil's high and continued inflation, normal values and export prices were compared in US dollars.

(22) All comparisons were made at the ex-works stage.

4. Margin

(23) Comparison of normal value with the export prices for the period from September 1989 to April 1990 shows that five Brazilian producers' exports to the Community were being dumped, with the following average margins based on the free-at-Community-frontier price :

— Italmagnesio SA	66,56 %
— Cia. Cimento Portland Maringa	39,31 %
— Cia. Ferroligas da Baía	41,18 %
— Cia. Ferroligas Minas Gerais	26,03 %
— Rima Eletrometalurgia SA	12,18 %
— Cia. Brasileira Carbureto de Cálcio SA	0 %

D. INJURY

(24) The Commission's task was to determine whether, in spite of the anti-dumping measures imposed on certain exporters, there was injury or threat of injury.

I. CURRENT SITUATION

1. Volume and price of imports

(25) Brazilian exports to the Community have increased, rising from 7 000 tonnes in 1986 to 17 000 tonnes in 1987, the year the anti-dumping measures entered into force, and reaching some 22 000 tonnes in 1990. Brazil's market share grew from about 1 % in 1986 to over 4 % in 1990. This relatively small market share must be considered in the light of that of other countries, such as Norway, Sweden, Iceland, Venezuela, the Soviet Union and Yugoslavia, which between them hold about 65 % and, having been guilty of dumping, are subject to measures.

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

2. Impact on the Community industry

The Commission took note of the following information :

(a) *Community capacity and production*

(27) Between 1986 and 1990 Community production capacity fell from 285 000 to 252 000 tonnes; in reducing its capacity, the Community industry has sought to specialize to some extent in an attempt to limit its losses in the face of downward pressure exerted — despite the anti-dumping measures in force — by exporters of non-member countries and Brazil in particular, on prices for standard and other products in the Community.

(28) Community production has fallen by about 41 % : standing at 227 000 tonnes in 1986, it fell to 133 000 tonnes in 1990 and part of this output was exported or stockpiled.

(b) *Market share and consumption*

(29) Between 1986 and 1990 the Community industry's market share shrank from 39 to 20 %, while annual Community consumption stabilized at about 500 000 tonnes in the same period: consumption obviously benefited imports from non-member countries, including Brazil.

(c) *Prices*

(30) In almost all cases, the resale prices 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 share of the Community market, Community producers were forced during the reference period to sell their products at ever-lower prices until they could not even cover costs.

(d) *Profits*

(31) The financial performance of the Community industry was negative from 1986 to 1987. Only in 1988 did a number of firms make a small profit. There was a brief recovery in the first half of 1989 owing to a substantial increase in the selling prices of the product in question. This relative improvement was modest, despite the upturn in the iron and steel industry, which is the main customer for the product concerned, and despite restructuring, which allowed better, though still not satisfactory, capacity utilization. During the reference period, the Community industry once more registered appreciable losses. The current anti-dumping measures did, however, curb firms' losses at a time when prices were falling.

3. **Cause and effect and other factors**

(32) The combination of the increase in imports originating in Brazil, the increase in their market share, the pressure exerted by the prices of those imports and the worsening situation in the Community industry, despite, the restructuring undertaken by the Community producers, shows that the position of the Community industry remains precarious in spite of the current anti-dumping measures.

In such a situation, low-priced imports from Brazil further debilitate the industry and constitute an additional injury.

(33) 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, while other non-member countries held a substantial share of the market, measures had been imposed on dumped imports from these countries, namely Norway, Sweden, Iceland, Venezuela, Yugoslavia and the USSR. It would seem that all these countries have contributed to the difficulties of the Community industry. These countries would be the object of discrimination, if measures were not taken against Brazil, which has also played a part in the aggravating the situation in the Community.

(34) The Commission therefore concluded, on the basis of the evidence above, that the imports of products originating in Brazil concerned by this proceeding were, by themselves, a cause of material injury to the Community industry. The Council confirms the conclusion.

II. THREAT OF INJURY

(35) There has been a significant increase in dumped imports originating in Brazil. If sustained, this rate of increase would have grave consequences for the Community industry. Brazil's production capacity of 280 000 tonnes, moreover, accounts for about 16 % of the total for market economy countries, which is also a significant proportion of world capacity. In 1989 its output reached about 230 000 tonnes, while domestic consumption peaked at about 120 000 tonnes. This disparity leaves about 100 000 tonnes available for export.

(36) As regards the possibility of Brazil 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, its terms of payment and the quality of its currencies.

(37) The investigation has also shown that low-priced Brazilian imports constantly undercut the Community industry. For all the reasons given in recitals 34, 35 and 36, the Council finds that there is also a threat of injury.

III. CONCLUSIONS

(38) In these circumstances, the Commission concludes that the present anti-dumping measures should be maintained in an amended form and new measures be imposed on some exporters. The Council confirms this conclusion.

E. COMMUNITY INTEREST

(39) It is in the Community's interest to restore fair competition, without the disturbance by unfair practices. Continued dumping would threaten the survival of the Community industry.

In view of ferro-silicon's importance in steel making, it could not be in the Community's interest to depend wholly on non-Community suppliers, particularly since some are located at a great distance from the Community.

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

(41) As is the case for any raw material, it is probable that price rises influence the costs of the manufacturing industries. However, no firm provided the Commission with clear evidence of a specific effect of ferro-silicon price increases 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 the impact would be slight, particularly in view of the low percentage of ferro-silicon used in the production of a tonne of steel and the relatively small proportion represented by this product in the overall cost of a tonne of steel.

(42) Having carefully compared the above arguments and the particularly serious problems faced by the Community ferro-silicon industry, which can be attributed to a significant extent to the imports in question, the Commission has concluded that it is in the Community's interest to maintain anti-dumping measures. The Council confirms this conclusion.

F. UNDERTAKINGS

(43) Six Brazilian producer/exporters:

— Companhia de Cimento Portland Maringa, São Paulo,

— Companhia de Ferroligas da Baía — Ferbasa, Pojuca,

— Companhia Ferroligas Minas Gerais — Minas Ligas, Contagem,

— Companhia Italmagnesio SA, São Paulo,

— Companhia Ferroligas Piracicaba Ltda, São Paulo,

— Companhia Paulista de Ferroligas, São Paulo,

have offered price undertakings which the Commission considers satisfactory (1). They will bring the import prices of ferro-silicon originating in Brazil up to a level considered sufficient to eliminate the injury to the Community industry.

G. DUTIES

(44) With regard to the firm Rima Eletrometalurgia SA, Belo Horizonte, which has offered no undertaking, the Commission considered that a duty deemed sufficient to eliminate the dumping margin determined should be imposed.

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

Expressed as a percentage of the net, free-at-Community-frontier price of the product before duty, the rate of duty is 12,2 %. The Council confirms this conclusion.

(45) To close any loopholes, an anti-dumping duty should be imposed on imports of the Brazilian product sold to the Community by Brazilian firms other than those referred to in recital 8. The rate of duty to be imposed on these other Brazilian exporters was determined on the basis of the weighted average injury to the Community industry, which is lower than the highest dumping margin. The injury threshold was based on the target price required by the Community industry, which consists of the industry's weighted average production costs with the addition of a reasonable profit margin.

Expressed as a percentage of the net, free-at-Community-frontier price of the product, before duty, the rate of duty is 39 %. The Council confirms this conclusion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ferro-silicon, containing between 10 and 96 % of silicon by weight, falling within CN codes 7202 21 10, 7202 21 90 and ex 7202 29 00 (Taric code 7202 29 00 * 10) and originating in Brazil.

(1) See page 47 of this Official Journal.

2. The duty, expressed as a percentage of the net, free-at-Community-frontier price of the product before duty, shall be 39 % (additional Taric code 8537).

Free-at-Community-frontier prices shall be net if the terms 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, expressed as a percentage of the net, free-at-Community-frontier price of the product before duty, is 12,2 % for the products referred to in paragraph 1 which are manufactured and exported direct to the Community by the Brazilian firm Rima Eletrometalurgia SA, Belo Horizonte (additional Taric code 8538).

4. The duty shall not apply to products produced and/or exported by the following Brazilian firms (additional Taric code 8539):

— Companhia Brasileira Carbureto de Cálcio, Rio de Janeiro,
— Companhia de Cimento Portland Maringa, São Paulo,
— Companhia de Ferroligas da Baía — Ferbasa, Pojuca,
— Companhia Ferroligas Minas Gerais — Minas Ligas, Contagem,
— Companhia Italmagnesio SA, São Paulo,
— Companhia Ferroligas Piracicaba Ltd, São Paulo,
— Companhia Paulista de Ferroligas, São Paulo.

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

Article 2

This Regulation shall enter into force on the 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 Luxembourg, 29 April 1991.

For the Council

The President

R. GOEBBELS