# COMMISSION REGULATION (EEC) No 3296/92

## of 12 November 1992

## imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes, of iron or non-alloy steel, originating in Czechoslovakia, Hungary, Poland and the Republic of Croatia and terminating the anti-dumping proceeding with regard to the Republics of Serbia and of Montenegro, the former Yugoslav Republic of Macedonia, the Republic of Bosnia-Herzegovina and the Republic of Slovenia

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 Article 11 thereof,

After consultations within the advisory committee as provided for by the abovementioned Regulation,

Whereas:

### A. PROCEDURE

(1) In September 1991, 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 with regard to the products in question originating in Czechoslovakia, Hungary, Poland and Yugoslavia and of material injury resulting therefrom. This evidence was considered sufficient to justify the initiation of a proceeding.

(3) The Commission accordingly announced, by a 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 seamless pipes and tubes, of iron or non-alloy steel, originating in Czechoslovakia, Hungary, Poland and Yugoslavia, falling within CN codes 7304 10 10, 7304 10 30, 7304 31 99, 7304 39 91 and 7304 39 93, and commenced an investigation. As for the latter country the Commission found that the products in question are produced exclusively in the territory which has now become the Republic of Croatia (hereinafter referred to as 'Croatia').

(4) The Commission officially advised the exporting producers (hereinafter referrred to as the 'producers') and importers known to the Commission to be concerned, the representatives of the exporting countries and the complainants. All parties directly concerned were given the opportunity to make their views known in writing and to request a hearing.

(5) All Community producers represented by the complainant, most of the producers of the countries concerned and some of the importers made their views known in writing. Some of them requested and were granted hearings.

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

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

(a) *Community producers:*

- Mannesmann Röhrenwerke AG, Düsseldorf, Germany,
- Benteler AG, Paderborn, Germany,
- Rohrwerk Neue Maxhütte GmbH, Sulzbach-Rosenberg, Germany,
- Dalmine SpA, Dalmine, Italy,
- Vallourec Industries, Boulogne Billancourt, France,
- Babcock & Wilcox Española SA, Galindo, Spain,
- Tubos Reunidos SA, Bilbao, Spain,
- British Steel Seamless Tubes, Corby, United Kingdom.

(b) *Importers in the Community:*

- Stahlrohr-Import GmbH, Düsseldorf, Germany,
- Stahl-Rohr-Commerz GmbH, Düsseldorf, Germany,
- Scopsi Jannone Arm., Naples, Italy.

(8) The investigation concerning dumping covered the period 1 January to 30 September 1991 (the 'investigation period').

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 321, 12. 12. 1991, p. 7.

## B. PRODUCT UNDER CONSIDERATION

(a) *Definition of product*

(9) The products covered by the complainant and for which the proceeding was opened are the following: seamless pipes, of iron or non-alloy steel, of a kind used for oil or gas pipelines of an external diameter not exceeding 406,4 mm and seamless tubes of circular cross-section, of iron or non-alloy steel, cold-drawn or cold-rolled, other than precision tubes and other tubes, of circular cross-section, of iron or non-alloy steel, other than threaded or threadable of an external diameter not exceeding 406,4 mm, falling within CN codes 7304 10 10, 7304 10 30, 7304 31 99, 7304 39 91 and 7304 39 93. For the purpose of this proceeding, these products are considered to be one product having basically the same physical characteristics and uses.

(b) *Like product*

(10) With regard to whether the imported products and the Community products are like products within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88, the results of the investigation carried out by the Commission have shown that they were manufactured by basically the same production technology generating products which are alike in their essential physical and technical characteristics and in their end uses.

(11) The products sold on the domestic market of Czechoslovakia, Hungary, Poland and Croatia are identical to the products exported to the Community and which are the subject of this proceeding.

## C. DUMPING

### 1. Normal value

(a) *Croatia*

(12) Zeljezara Sisak is the sole producer of the products concerned in Croatia. The company submitted information by responding to the questionnaire and has cooperated during the investigation period.

(13) Normal value was established on the basis of the comparable prices actually paid or payable in the ordinary course of trade in Croatia for the like products during the investigation period. The evidence made available showed that domestic sales were made to independent customers in representative quantities. The Commission considered that commercial transactions between independent parties based on sales contracts and commercial invoices were carried out and that these transactions were accounted for according to Yugoslav accounting rules which have been adopted by Croatia.

(14) In order to establish normal values corresponding to the different types and dimensions of the products concerned and to different pricing periods applicable throughout the investigation period, the Commission based its preliminary determination on detailed domestic price lists. To this effect, the Commission has verified that domestic sales had been invoiced in conformity with the official price lists issued by the producer concerned. Account was taken also of the fact that identical price lists, sales and payment conditions were applied for sales to both end-users and to dealers.

(b) *Czechoslovakia, Hungary and Poland*

(15) At the date of initiation of the present procedure and throughout the investigation period, Council Regulation (EEC) No 1765/82 of 30 June 1982 on common rules for imports from state trading countries [1], as amended by Regulation (EEC) No 848/92 [2], applied to imports of the products concerned originating in Czechoslovakia, Hungary and Poland. Accordingly, these countries could not be considered to have market-economies and the Commission therefore had to base its determinations on the normal values of the products concerned in a market-economy country according to Article 2 (5) of Regulation (EEC) No 2423/88.

(16) The complainant had proposed that for the purpose of calculating normal value for Czechoslovakia, Hungary and Poland, the price of the products concerned on the domestic market of Croatia should be taken as a reference.

(17) Most of the Czechoslovakian, Hungarian and Polish producers contested this choice and proposed that because of the economic reform programmes in these countries to ensure their transition toward market-economies, the Commission should use domestic prices or production costs in these countries to determine normal values.

For the reasons given in recital 15, the Commission was unable to accept this proposal.

[1] OJ No L 195, 5. 7. 1982, p. 1.
[2] OJ No L 89, 4. 4. 1992, p. 1.

(18) Moreover, it was claimed that because of the particular political situation in Croatia and its economic consequences, Croatia could not be considered an appropriate analogue market-economy country for the purpose of establishing normal values. However, the claimants failed to propose any other possible reference country.

(19) The Commission therefore carefully examined whether other market-economy countries might provide a more suitable basis for the determination of normal values.

It was found that prices and production costs in western industrialized market-economy countries such as Austria, Finland, Sweden, Norway and Japan, having a representative production and market of the products concerned, were significantly higher than in Croatia. In addition their cost and wage structure cannot be compared with the other countries concerned, i. e. Czechoslovakia, Hungary and Poland.

(20) In this context the Commission also examined in particular whether Brazil constituted a reasonable basis of comparison. It was found that production facilities in Brazil, because of the similarities in the manufacturing process and its scale, the access to raw material and low labour and energy costs could be taken into account. For this purpose the Commission gathered relevant information on the production of seamless tubes and their marketing conditions in Brazil in particular with regard to manufacturing costs and price developments. It appeared, however, that normal values, based either on prices applied on the Brazilian market or on cost of production in Brazil, were heavily distorted by the effects of inflation and would have lead to unreasonable results compared to Croatia.

(21) Finally, and as the sole alternative pursuant to Article 2 (5) (c) of Regulation (EEC) No 2423/88, the Commission examined the prices actually paid or payable in the Community for the like products, duly adjusted to include a reasonable profit margin, as most of the Community producers were operating at a loss. The Commission found that these adjusted prices were significantly higher than those on the Croatian domestic market and that calculations on this basis would result in excessive dumping margins for the three exporting countries concerned given the incomparability of the economic structures between the Community and these countries.

(22) Under these conditions and taking into account that there are no significant differences in the production processes, supplies of raw materials, scale of production and quality of the finished products between Croatia and the three countries concerned and that cost of production and the price level in Croatia are in a reasonable proportion, the Commission concluded that it was not unreasonable to apply the normal values established for Croatia to the Hungarian, Polish and Czechoslovak products.

### 2. Export prices

(23) Export prices for all four exporting countries were determined on the basis of the prices actually paid or payable for the like products sold for export in the ordinary course of trade to independent importers in the Community.

### 3. Comparison

(24) For the purpose of ensuring a fair comparison of 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, commissions, ancillary costs and the effect of differences in the cost of credit granted for the sales under consideration.

In addition, export prices were compared with normal value on a transaction by transaction basis and, where sufficient evidence was supplied, on a per product dimension basis for each of the dimensions exported as well as on the basis of the domestic price lists of the Croatian producer applicable at the time of exportation.

All comparisons were made at the ex-works level.

### 4. Dumping margins

(25) The preliminary determination of the facts reveals the existence of dumping for the Croatian producer Zeljezara Sisak as well as for the products concerned exported by Hungary, Poland and Czechoslovakia. The margins of dumping which vary according to the exporter and the importing Member State are equal to the amount by which the normal values, as established, exceed the prices for export to the Community.

(26) The weighted average margins of dumping established and expressed as a percentage of the cif Community frontier prices of the imports are as follows :

| | |
|---|---|
| — Zeljezara Sisak, Croatia | 25,5 % |
| — Hungary | 21,8 % |
| — Poland | 11,7 % |
| — Czechoslovakia | 49,6 %. |

## D. INJURY

### 1. Cumulative effects of the dumped imports

(27) Since the products exported from the countries concerned are interchangeable, have the same end uses and their individual export volumes are not negligible, the Commission has according to its normal practice established the impact of the dumped products on the Community industry cummulatively.

(28) The Hungarian exporter claimed that, as a result of differences in sales conditions and increase in export volumes, the impact of its exports to the Community should be examined on an individual basis. After examination of the facts, the Commission found, however, that the imports from Hungary took place under comparable conditions to those of the other countries concerned and that it would be discriminatory as regards these other exporters should the Hungarian exporter be treated separately.

### 2. Volume, market share and price undercutting of dumped imports

(a) *Volume*

(29) Cumulated imports into the Community from Hungary, Poland, Czechoslovakia and Croatia rose from 77 620 tonnes in 1988 to 125 841 tonnes in 1990 and 104 653 tonnes during the investigation period (nine months) corresponding to an increase of 80 % on an annual basis since 1988.

(30) Total imports from the exporting countries concerned into the most affected Member States increased between 1988, 1990 and the investigation period from 32 010 to 67 754 and 57 762 tonnes in Germany and from 28 647 to 41 542 and to 32 709 tonnes in Italy.

(b) *Market shares*

(31) Between 1988 and the investigation period, the cumulated market share in the Community held by the exporting countries concerned rose from 7,8 to 13,7 % and individually as follow :

— for Czechoslovakia from 1,6 to 4,6 %,

— for Hungary from 2,0 to 3,1 %,

— for Poland from 0,2 to 1,5 %,

— for Croatia from 3,9 to 4,6 %.

(32) During the same period the cumulated market shares in the most affected Member States increased in Germany from 11,3 to 27,1 % and in Italy from 17,9 to 25,7 %.

(c) *Price undercutting*

(33) Prices of the imported products from the four countries concerned were, during the investigation period, significantly below the prices practised by the Community producers. Price undercutting was established for each of the exporters which cooperated by comparing, at the same level of trade, weighted average prices of these exporters for sales to the first independent customers in the Community with weighted average net sales prices of the Community producers.

This comparison was made, where sufficient evidence was available, on a per product dimension basis for each of the dimensions imported which were considered for the preliminary dumping determination.

(34) Price comparability was established taking into account transport costs, customs duty and importer's margin, including customs clearance, handling, commission, financing and profit added to the import prices, to the extent considered appropriate.

(35) The results of the comparison showed margins of undercutting for all countries concerned. The weighted average price undercutting expressed at a free-at-Community-frontier level were :

| | |
|---|---|
| — for Czechoslovakia | 30,4 % |
| — for Hungary | 21,7 % |
| — for Poland | 10,8 % |
| — for Croatia | 17,4 %. |

### 3. Situation of the Community Industry

(a) *Community production*

(36) The volume of production of the products concerned by the Community producers investigated increased from 1 380 000 tonnes in 1988 to 1 440 000 tonnes in 1989. With the increasing

import pressure caused in particular by the dumped products, production started to decline in 1990 to fall to 1 300 000 tonnes in the investigation period on an annual basis, marking a reduction of 10 % within less than two years. The decrease was particularly marked in Germany which absorbed 55 % of the dumped imports from the exporting countries concerned during the investigation period. Thus, the volume of production in Germany declined from 716 000 tonnes in 1989 to 444 835 tonnes in the nine months of 1991 or by around 17 % measured on an annual basis.

(b) *Capacity and utilization rate*

(37) Since 1980, the steel tube industry of the Community has gone through a severe restructuring process in order to adapt its capacity to changing market conditions. Until the end of 1990, capacity for the production of seamless tubes had been reduced by about 20 %. Since the beginning of 1991, the intensified deterioration of the situation of the Community industry combined with the increasing inflow of dumped imports from the exporting countries concerned has led to drastic decisions with regard to further streamlining of capacities and several closures of production plants, mainly in Germany but also in Italy and the United Kingdom.

(38) Despite the above-mentioned restructuring efforts, capacity utilization of Community producers declined sharply between 1988 and the investigation period. The utilization rate of almost all Community producers fell considerably below 75 %, which is considered the break-even point for profitability in the pipe and tube sector.

(c) *Sales, consumption and market share*

(39) The total volume of sales of the products concerned on the Community market made by the Community industry declined by around 9 % since 1988. While the annual consumption in the Community and in most of the Member States remained generally stable between 1988 and the investigation period, the Community producer's market shares declined over the same period :

— in the Community from 81 to 76 %,

— in Germany from 81 to 64 %,

— in Italy from 64 to 56 %.

(d) *Sales prices*

(40) Following price increases in 1989, the Community producers were obliged, due to continued pressure on prices to maintain their prices in spite of the upward development of cost of production. Community producers were prevented from raising their prices in order to reflect the rise in production costs and in some cases had to lower their prices to levels which did not cover costs or which did not allow a reasonable profit to be made.

(e) *Profitability*

(41) In 1988 and 1989, certain Community producers made reasonable profits as a result of the sharp rise in selling prices linked with the upturn in the steel industry. Nevertheless, the high volume of dumped imports from the four countries concerned has led, since 1990, to a substantial reduction of profits or financial losses.

(f) *Employment*

(42) With regard to the employment situation of the whole pipe and tube industry in the Community, the combined effect of restructuring plans and closures of factories intended to reduce the cost of production and to defend profitability is estimated to have led to more than 20 000 job losses between 1988 and 1991. Particularly in Germany and Italy, the considerable reduction in orders forced Community producers in many cases to introduce measures of short-time working, shift cancellations and alternate production on two mills by the same shift.

4. **Conclusion on injury**

(43) The preliminary examination of the facts on injury shows that, due in particular to the decline of production and sales volume, the significant loss of market share, the prevention of price increases to cover rising production costs and the deterioration in financial results, the Community industry had suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

## E. CAUSATION OF INJURY

(44) The Commission examined whether the injury suffered by the Community industry had been caused by the dumped imports and whether other factors might have caused or contributed to that injury.

(45) It was ascertained in the course of the investigation that the trend of imports originating in Czechoslovakia, Hungary, Poland and Croatia, their increase of market share and the downward pressure on prices exerted by these imports coincided with the decrease of Community production, capacity utilization, sales volume, market share, profits and employment which led to the deterioration in the Community industry's competitive and financial situation. While consumption of the products concerned remained relatively stable, the market share of the imports in question almost doubled from 7,8 % in 1988 to 13,7 % in the investigation period when the market share held by Community producers declined from 81,4 % to 75,9 %. Thus the Community industry's lost market share has been mirrored by the exporting countries gains.

(46) In a highly priced competitive market, such as the seamless pipe and tube industry, the considerable price undercutting has a clearly negative effect on sales and accordingly on the profitability of the Community industry. The price undercutting was only made possible by the dumping as shown by the fact that in all cases the margin of dumping is higher than the price undercutting.

(47) The Commission also examined whether other factors such as volume and prices of imports which are not dumped or contraction in demand might have caused or contributed to the injury suffered by the Community industry.

Between 1988 and the investigation period, imports from other third countries decreased from 108 000 to 104 000 tonnes on an annual basis and their market share declined from 10,8 % to 10,2 %. Measured against a growth of 65 000 tonnes of the combined imports of the exporting countries concerned and an increase of their market share of 6 % over the same period, it is considered that the beneficiaries in terms of sales volume and market share were clearly the exporting countries concerned by the investigation. The Commission has also no indication, that these imports have been dumped and took into account that their prices were distinctly higher than those of the dumped imports.

Regarding the development of demand, the Commission found that consumption of the products concerned in the Community remained practically stable between 1988 and 1990 increasing only slightly from 1 000 000 to 1 036 000 tonnes.

(48) In the light of these considerations, the Commission has come to the conclusion that, for purposes of its provisional findings, the dumped imports originating in Czechoslovakia, Hungary, Poland, and Croatia have, taken in isolation, caused material injury to the Community industry.

## F. COMMUNITY INTEREST

(49) The Commission considers that the adoption of measures will eliminate the injurious effects of the dumped imports from the exporting countries concerned by permitting the Community producers to obtain a reasonable return on their sales of seamless tubes and by re-establishing fair competitive conditions in the Community market for the product concerned. This the Commission considers, would be in the general interest of the Community.

(50) The Commission has also considered that steel tube production is an important basic industry in the Community clearly linked upstream to the iron and steel industry. The sector continues to undergo a severe restructuring process (see recital 37). In 1988, the sector employed about 75 000 people in the Community, compared to 124 000 in 1981. Between 1988 and 1991 a further 20 000 jobs were lost in the steel tube industry. Regionally, the plants are located in the vicinity of the steel producing centres which are already suffering from employment difficulties linked to the downturn in the steel industry.

Downstream, the steel tube sector is an important supplier of many branches of th manufacturing industry. The most important customer groups are mechanical engieering, construction, structural steelworks, vehicle building and the energy sector, including nuclear.

(51) In order to be in a position to manufacture the whole range of products at competitive costs, the sector depends on a reasonable utilization rate of its equipment, basically provided for by the production of standardized commercial quality tubes which are in direct competition with the dumed products imported from the exporting countries concerned and which account for a major part of the revenue generated by the industry. A decline in this production activity would also affect the production of other higher quality product categories increasing their cost and the prices for the Community consumers.

(52) The Commission also took into account the interests of the users of seamless steel tubes imported from the exporting countries in question and considered that the effects of the necessary price increases will not be significant by comparison to the price based on unfair pratices. In any event, the Community processors of the products concerned cannot expect to benefit from price advantages resulting from unfair competition forcing Community producers to sell their products at a loss.

No submissions to the contrary were made by or on behalf of Community purchasers or processors of the tubes concerned.

(53) Balancing the various interest involved, the Commission considers that it is therefore in the Community's interest to impose measures in the form of provisional anti-dumping duties in order to prevent further injury being caused by the dumped imports concerned during the remainder of the proceeding.

## G. PROVISIONAL DUTY

(54) In order to stablish the amount of the duty necessary to eliminate the injury, the Commission is of the opinion that for the purpose of provisional measures it would be sufficient to eliminate the price under cutting found. This would enable the Community producers to raise their prices and to improve their profitability.

(55) On this basis, the Commission determined the provisional anti-dumping duties to be :

— 21,7 % for Hungary,

— 17,4 % for Croatia,

— 10,8 % for Poland,

— 30,4 % for Czechoslovakia,

calculated on the net free-at-Community-frontier price of the products concerned, customs uncleared.

## H. FINAL PROVISION

(56) In the interest of sound administration, a period should be fixed within which the parties concerned may make their views known and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered forthe purpose of any definitive duty which the Commission may propose.

## I. TERMINATION

(57) As the investigation carried out by the Commission revealed that the products concerned are not produced and exported to the Community by the Republics of Serbia and of Montenegro, the former Yugoslav Republic of Macedonia, the Republic of Bosnia-Herzegovina and the Republic of Slovenia, the Commission considered that the proceeding concerning these countries may be terminated without the imposition of protective measures.

## J. PROVISIONAL SUSPENSION OF THE APPLICATION OF THE PROVISIONAL DUTY REGARDING CROATIA

(58) Considering the arguments brought forward by the Croatian producer concerning the dramatic situation in Croatia, in particular that the production units are situated in the combat zone and that production and export acivities are severly hampered by the ongoing warlike activities, the Commission is of the opinion that as long as these conditions prevail, the applicaion of anti-dumping measures with regard to Croatia should be temporarily suspended.

## K. QUANTITATIVE RESTRICTIONS WITH REGARD TO CZECHOSLOVAKIA

(59) The Commission is aware of the fact that imports into Germany of the products failing within CN code 7304 and originating in Czechoslovakia are subject to presentation of an import authorization issued by the German authorities against an annual quota set out in Commission Decision 92/433/EEC [1].

Taking into account that the above annual quota is already exhausted and that the quantitative restrictions expire as of 31 December 1992, it is considered unnecessary to lift these quantitative measures now,

HAS ADOPTED THIS REGULATION :

*Article 1*

1. A provisional anti-dumping duty is hereby imposed on the following imports originating in Czechoslovakia, Hungary, Poland, and Croatia :

— seamless pipes, of iron or non-alloy steel, of a kind used for oil or gas pipelines, of an external diameter not exceeding 406,4 mm (falling within CN codes 7304 10 10 and 7304 10 30),

[1] OJ No L 238, 21. 8. 1992, p. 24.

— seamles tubes of circular cross-section, of iron or non-alloy steel, cold-drawn or cold-rolled, other than precision tubes (falling within CN code 7304 31 99), and

— other tubes of circular cross-section, of iron or non-alloy steel, other than threaded or threadable, of an external diameter not exceeding 406,4 mm (falling within CN codes 7304 39 91 and 7304 39 93).

2. The rate of the duty applicable to the net free-at-Community-frontier price o imports of the products concerned, originating in the following countries, not cleared through customs, shall be :

| | Rate of duty |
|---|---|
| — Czechoslovakia | 30,4 % |
| — Hungary | 21,7 % |
| — Poland | 10,8 % |
| — Croatia | 17,4 % . |

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*

The application of Article 1 is provisionally suspended with regard to Croatia.

*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*

The proceeding concerning imports of certain seamless pipes and tubes, of iron or non-alloy steel, originating in the former Yugoslav Republic of Macedonia, the Republics of Serbia and of Montenegro, the Republic of Bosnia-Herzegovina and the Republic of Slovenia is hereby terminated.

*Article 5*

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 14 of Regulation (EEC) No 2423/88, 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, 12 November 1992.

*For the Commission*

Frans ANDRIESSEN

*Vice-President*