# COUNCIL REGULATION (EEC) No 1189/93

## of 14 May 1993

## imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes, of iron or non-alloy steel, originating in Hungary, Poland and the Republic of Croatia and definitively collecting provisional anti-dumping duties

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 12 thereof,

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

Whereas :

### A. PREVIOUS ACTION

(1) By Regulation (EEC) No 3296/92 [2], the Commission imposed provisional anti-dumping duties on imports of certain seamless pipes and tubes, of iron or non-alloy steel, originating in Czechoslovakia, Hungary, Poland and the Republic of Croatia. The Council, by Regulation (EEC) No 545/93 [3], extended these duties for a period not exceeding two months.

Due to the political changes as from 1 January 1993, the proceeding now concerns the Czech Republic and the Slovak Republic as successors of the former Czech and Slovak Federal Republic.

### B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping duties, the interested parties who so requested were granted an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.

(3) The Czech, Slovak and Hungarian exporters alleged that the Commission had failed to fulfil its obligations pursuant to Articles 23, 27 (2) and 27 (3) (b) of the Interim Agreements [4] on trade and trade-related matters, concluded between the European Economic Community and the European Coal and Steel Community of the one part, and the Czech and Slovak Federal Republic and the Republic of Hungary of the other part, by omitting in particular duly to inform the Joint Committees set up under the Interim Agreements as it was required to do at certain stages of the proceeding.

(4) As far as the initiation of the proceedings is concerned, the Council notes that at the time of the initiation of the procedure the Interim Agreements had not yet entered into force and the Joint Committees had not been set up. The Commission therefore notified the competent authorities of the countries concerned purusant to Article 7 (1) (b) of Regulation (EEC) No 2423/88 of the initiation of the proceeding. After the imposition of provisional duties, the Joint Committees were notified pursuant to Article 27 (3) (b) of the Interim Agreements.

(5) In this respect some exporters claimed that there was no urgency in this case for the Commission to impose provisional anti-dumping duties forthwith and that the Joint Committees should have been informed pursuant to Article 27 (2) of the Interim Agreements before adopting provisional measures.

(6) The results of the preliminary investigation did, however, show that the dumped imports were causing material injury to the Community industry. The Council notes that in this case any further delays would have considerably increased this injury so that an urgent intervention within the meaning of Article 27 (3) (b) of the Interim Agreement was indicated.

(7) Upon request, the parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.

(8) The oral and written comments submitted by the parties were examined and, where appropriate, considered in the Commission's findings.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No 2 328, 14. 11. 1992, p. 15.
[3] OJ No L 58, 11. 3. 1993, p. 1.
[4] Czechoslovakia : OJ No L 115, 30. 4. 1992, p. 2.
Hungary : OJ No L 116, 30. 4. 1992, p. 2.

(9) This investigation was not concluded within the period specified in Article 7 (9) (a) of Regulation (EEC) No 2423/88 owing to the complexity of the proceeding and to the difficulties of communication and information-gathering, resulting in numerous requests from the parties concerned for extensions of deadlines, which were granted by the Commission when justified by the circumstances.

## C. COMMUNITY INDUSTRY

(10) The Hungarian exporter claimed that its products were partly purchased by certain complaining Community producers themselves and that those producers should have been excluded from the determination of injury pursuant to Article 4 (5) of Regulation (EEC) No 2423/88.

(11) In that context, the Commission recalls its standing practice of excluding importing Community producers only when they are either shielded from the effect of the dumped imports, draw undue benefits from them or import such quantities in relation to their own production that they can no longer be considered to be committed to production in the Community.

(12) In this case the products concerned, originating in Hungary, were not imported by complaining Community producers themselves, as was alleged. The importers were certain trading companies with which the producers had loose ties through a participation or a common holding. The imports therefore cannot be attributed to the producers themselves.

(13) With regard to the effects of the dumped imports brought in by some related importers, the Commission found that the producers concerned could not have benefited from those transactions or have been thereby shielded from the effects of dumping. The importers in question did not function, as alleged, as sales and distribution subsidiaries on behalf of, and under the instructions of, the complaining producers but operated independently in competition with the sales activities of those producers. The imports in question were made and resold in the Community under the same conditions as other dumped imports. In addition, the quantities involved were small in relation to the ouput of the producers concerned. In those circumstances, the Commission concludes that any advantage which may have indirectly accrued is negligible compared to the direct injury suffered by the producers as shown in recitals 36 and 37 and that there are no reasonable grounds for excluding those producers from the Community industry. The Council confirms this finding of the Commission.

## D. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(14) The Commission, in recitals 9, 10 and 11 of Regulation (EEC) No 3296/92, defined the products which were the subject of the proceeding. The Hungarian exporter claimed that the Commission should have distinguished three different products, namely commercial pipe and tubes, line pipe, and cold-drawn or cold-rolled tubes — all three being technically different products for different applications.

(15) As is set out by the Commission in Regulation (EEC) No 3296/92, all seamless tubes and pipes are manufactured by basically the same production technology, generating products which are alike in their essential physical and technical characteristics and in their end uses. While there are some quality differences between these three types of tubes, these are not such as to establish clear dividing lines between the products. Indeed, the higher-quality tubes can be, and are, used for the same applications as the lower-grade tubes. As far as like products are concerned, the Commission found that the tubes sold on the Croation market were similar or identical to those imported from the countries concerned and that the products manufactured and sold by the Community industry were also similar in all respects. Indeed, the investigation of the Commission has revealed that all products regardless of their grade and origin compete with each other in the Community market.

Accordingly, the Commission concluded that the products concerned were to be considered 'like products' within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88; whereas that conclusion is confirmed by the Council.

## E. DUMPING

### 1. Normal value

#### (a) *Croatia*

(16) As no new evidence has been submitted by the Croatian exporter since the imposition of provisional duties, the findings on dumping with regard to Croatia, as set out in Regulation (EEC) No 3296/92, are considered to be definitive.

(b) *Hungary, Poland and former Czechoslovakia*

(17) The Commission considered Hungary, Poland and former Czechoslovakia during the investigation period as non-market economies and, in accordance with Article 2 (5) of Regulation (EEC) No 2423/88, based its determinations on the normal values of the products concerned in a market economy third country, in this case Croatia.

(18) Most of the Hungarian, Polish, Czech and Slovak producers contested that determination by the Commission and claimed once again that their domestic prices or production costs should be taken into consideration, since their economies had reached a stage where they had to be treated as market economies.

(19) The Commission considers that the fact that during the investigation period they were still listed as State-trading countries according to Regulation (EEC) No 1765/82 of 30 June 1982 on common rules for imports from State-trading countries [1], is decisive, and accordingly that Article 2 (5) of Regulation (EEC) No 2423/88 is applicable to the determination of normal value for those countries. The Council confirms this finding.

(20) Several parties to the proceeding claimed that the Commission should have taken account of the change of circumstances due to the removal of those countries from the list of State-trading countries by Council Regulation (EEC) No 517/92 of 27 February 1992 amending the autonomous import arrangements for products originating in Hungary, Poland and the Czech and Slovak Federal Republic (CSFR) [2], which entered into force in March 1992, namely by updating the investigation period.

(21) The Commission notes that the removal of the countries concerned from the list of State-trading countries by Regulation (EEC) No 517/92 took effect on 1 March 1992, i.e. after the investigation period determined pursuant to Article 7 (1) (c) of Regulation (EEC) No 2423/88 which is the basis for the anti-dumping proceeding and the findings of the Commission. As was stated in recital 19, this leads to the conclusion that, in the present case, the countries concerned had to be treated as State trading economies. Matters would be quite different if the Commission had to fix a new investigation period situated entirely after the abovementioned date.

(22) The Hungarian exporter contested once against the choice of Croatia as a suitable analogous market economy, alleging that the particular difficulties this country was and is facing, the difference in the production technology and an unrepresentative product mix and market made it an inappropriate choice. No evidence for these allegations was, however, produced. As an alternative for Croatia, the Hungarian exporter proposed Venezuela.

(23) As far as Venezuela is concerned, the Commission has information that the main production plant was shut down three years ago. Supplies of seamless tubes to the domestic market in Venezuela are principally covered by imports. That country cannot therefore be considered as suitable.

(24) As far as Croatia is concerned, the information made available to the Commission shows that during the investigation period the Croatian exporter had normal production. Sales activities on the domestic market continued throughout the investigation period and were representative in relation to the exports concerned. As was explained in recital 22 of Regulation (EEC) No 3296/92, prices charged showed a reasonable level in relation to production costs. For the above reasons, the Council confirms the conclusion of the Commission that it was appropriate and not unreasonable to apply the normal values established for Croatia to the Czechoslovakian, Hungarian and Polish products.

(25) The Hungarian exporter claimed further that the Commission should not have used the domestic price lists of the Croatian producer to establish normal value but should have used actual sales prices.

(26) As is explained in recital 14 of Regulation (EEC) No 3296/92, the Commission established that actual sales of the Croatian producer were made in conformity with the price lists. The Council confirms this finding.

**2. Export price**

(27) Export prices for all four exporting countries were determined as explained in recital 23 of Regulation (EEC) No 3296/92, and, in the absence of any relevant new arguments, are considered definitive.

[1] OJ No L 195, 5. 7. 1982, p. 1. Reglation as last amended by Regulation (EEC) No 848/92 (OJ No L 89, 4. 4. 1992, p. 1).
[2] OJ No L 56, 29. 2. 1992, p. 1.

### 3. Comparison

(28) Normal values and export prices were compared in the manner set out in recital 24 of Regulation (EEC) No 3296/92.

(29) Some of the exporters claimed adjustments on behalf of differences in quality between their products exported to the Community and those sold by the Croatian producer on his domestic market.

(30) No evidence was, however, produced showing, within the same categories of tubes, any relevant differences in physical characteristics of the products manufactured in Poland, Hungary, former Czechoslovakia, Croatia or in the Community which would affect the comparison carried out by the Commission. The claim is, therefore, to be dismissed in accordance with Article 2 (9) (b) of Regulation (EEC) No 2423/88.

(31) Some exporters submitted that normal values should have been adjusted for differences in selling expenses such as salesmen's salaries and for sales made in different quantities.

(32) On the basis of the evidence made available to the Commission by the Croatian producer, allowances have been made for all identifiable, directly related selling expenses incurred at the level of trade on which the comparison was based. The Commission had no indication — nor did the Croatian company claim — that it had incurred allowable expenses for salesmen directly involved in the distribution of the products concerned. Instead of volume rebates, the Croatian company operates a system of graduated supplements of up to 20 % for shipments of less than a threshold quantity. As most export sales exceeded that quantity, the Commission, for the purpose of comparison, has disregarded these supplements in respect of all export sales.

(33) The Hungarian exporter alleged that the Commission had used a government-fixed exchange rate for the Yugoslav dinar for the conversion of normal value and export prices. This is not the case. Contrary to the situation in Hungary, where a government-fixed rate for commercial transactions was operated until October 1991, the Yugoslav dinar was floating throughout the investigation period and the Commission has used the free market rate as recorded by the International Monetary Fund.

### 4. Dumping margins

(34) The final examination 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 former Czechoslovakia. The margins of dumping which vary according to the exporter are equal to the amount by which the normal values, as established, exceed the prices for export to the Community.

(35) The weighted average margins of dumping definitively 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 %, |
| — the Czech Republic | 49,6 %, |
| — the Slovak Republic | 49,6 %. |

## F. INJURY

(36) In its preliminary findings, the Commission concluded that the Community seamless tube industry had suffered material injury from the cumulated effects of the dumped imports from the countries concerned. This view was founded mainly on the convergence of economic indicators such as the decline of production and sales volume, the significant loss of market share, depression of prices in a period of rising production costs and consequent deterioration in financial results.

(37) As far as the situation of the Community industry is concerned, no new arguments were put forward after the imposition of provisional duties. The Council therefore confirms the findings set out in recitals 36 to 42 of Regulation (EEC) No 3296/92.

## G. CAUSALITY

(38) The Polish and Hungarian exporters argued that their exports did not follow the same pattern as those of the other countries concerned and that therefore the Commission should not have established the cumulative impact of their dumped imports on the Community industry.

(39) Contrary to this allegation, the Commission established that the increase in market share of those countries is considerable and the market share as such was not negligible. In addition, the exporters of both countries resorted to undercutting practices to gain those increased market shares. They followed, therefore, a similar pattern of market strategies. For these and the reasons given in recitals 27 and 28 of Regulation (EEC) No 3296/92, the Commission concludes, and the Council confirms, that the impact of the dumped imports has to be established cumulatively.

(40) As far as price undercutting is concerned, several exporters alleged that, in the comparison of their resale prices in the Community with prices charged by the Community industry, certain adjustments made in the provisional determination underestimated the level of the actual costs incurred. The Commission established, however, that those adjustments corresponded to the normal transaction costs at the comparable level of trade.

(41) With regard to other factors such as changes in demand, the influence of other imports and restructuring problems, the Commission has analysed the situation in recital 47 of Regulation (EEC) No 3296/92, which is hereby confirmed by the Council.

(42) In the absence of further arguments, the Council confirms the findings of the Commission set out in recitals 44 to 48 of Regulation (EEC) No 3296/92.

## H. COMMUNITY INTEREST

(43) Several exporters argued that in view of the special relationship of the Community with Hungary, Poland, the Czech Republic and the Slovak Republic, as reflected in various agreements between the contracting parties and in particular the Interim Agreements on trade and trade-related matters concluded by the Community with those countries, it is not in the Community's interest to impose anti-dumping measures. To do so would bring exports to a halt and prevent the countries from developing and diversifying trade with the Community, which is the declared interest of the Community in its relations with them.

(44) In this context, the Commission notes that the agreements explicitly provide for the application of anti-dumping measures. The Commission accepts that anti-dumping measures should not normally preclude certain exporters from trading with the Community. Indeed, given the specific circumstances of the present case, the Commission calculated the anti-dumping measures in such a way as to eliminate the price undercutting, thus ensuring that fair competition was restored on the Community market without reducing the overall level of competition.

(45) No observations were received from any user of the products concerned imported from Hungary, Poland, Croatia, the Czech Republic and the Slovak Republic within the time limit laid down in Article 3 of Regulation (EEC) No 3296/92. The general considerations with regard to 'Community interest' (see recitals 49 to 53 of that Regulation) are accordingly confirmed by the Council.

(46) In the circumstances, the Council considers that it is in the Community interest to impose definitive anti-dumping measures to eliminate the injurious effects of dumped imports.

## I. DUTY

(47) Provisional measures took the form of anti-dumping duties. They were imposed at rates based on the price undercutting recorded by the Commission. No arguments were raised concerning this method of calculating the duty. The findings of the Commission as expressed in recitals 34 and 35 of Regulation (EEC) No 3296/92 being confirmed by the Council, the amounts of the definitive anti-dumping duties should be the same as the amounts of the provisional duties.

## J. UNDERTAKINGS

(48) Having been informed of the final results of the investigation, the Polish, Hungarian and Croatian exporters offered undertakings within the meaning of Article 10 (2) (b) of Regulation (EEC) No 2423/88.

Following consultations within the Advisory Committee, during which no objections were raised to this solution, the undertakings were accepted by Commission Decision 93/260/EEC (1).

## K. PROCEEDING WITH REGARD TO THE CZECH REPUBLIC AND THE SLOVAK REPUBLIC

(49) In light of the negotiations of trade arrangements with the Czech Republic and the Slovak Republic for the years 1993 to 1995 with regard to certain sensitive steel products including welded and seamless tubes comprising also the products covered by this proceeding, it is not appropriate, at this point in time to take protective measures with regard to the Czech Republic and the Slovak Republic.

## L. COLLECTION OF PROVISIONAL DUTIES

(50) In view of the level of dumping margins found and the seriousness of the injury caused to Community producers, it is considered necessary that amounts secured by way of provisional anti-dumping duties should be collected in full with regard to all imports of the products concerned, originating in Hungary, Poland, the Republic of Croatia, the Czech Republic and the Slovak Republic for the

(1) See page 42 of this Official Journal.

period up to 31 December 1992. For imports effected after that date the amounts should be released, since for all known producers, undertakings or other trade measures will be applicable and are considered to eliminate the injury caused by dumping to the Community industry,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on the following imports:

— seamless pipes, of iron or 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),

— seamless tubes of circular cross-section, of iron or non-alloy steel, cold-drawn or cold-rolled, other than precision tubes (falling within CN codes 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)

originating in Hungary, Poland and Croatia.

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

| | *Rate of duty* | *Taric additional codes* |
|---|---|---|
| — Hungary | 21,7 % | 8718 |
| — Poland | 10,8 % | 8720 |
| — Croatia | 17,4 % | 8722. |

3. Notwithstanding paragraph 1, the duty shall not apply to the products concerned manufactured or exported by:

*Hungary:*

Csepel Tube Works, Budapest
(Taric additional code 8717)

*Poland:*

Centrozap, Foreign Trade Company Ltd, Katowice
(Taric additional code 8719)

Huta Andrzej, Zawadzkie
(Taric additional code 8719)

Stalexport, Foreign Trade Enterprise, Katowice
(Taric additional code 8719)

Huta im M. Buczka, Sosnowiec
(Taric additional code 8719)

Huta Czestochowa, Czestochowa
(Taric additional code 8719)

Huta Jednosc, Siemianowice Sl.
(Taric additional code 8719)

Huta Batory s.a., Chorzow
(Taric additional code 8719)

*Croatia:*

Zeljezara Sisak
Sisak Steel Pipe Works, Zagreb
(Taric additional code 8721).

4. The provisions in force concerning customs duties shall apply to the said duty.

*Article 2*

The amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EEC) No 3296/92 shall be definitively collected in full for imports of the products concerned, originating in Hungary, Poland, the Republic of Croatia, the Czech Republic and the Slovak Republic for the period up to 31 December 1992. For imports effected after this date the amounts shall be released.

*Article 3*

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, 14 May 1993.

*For the Council*

*The President*

N. HELVEG PETERSEN