COMMISSION REGULATION (EEC) No 797/93

of 30 March 1993

imposing a provisional anti-dumping duty on imports of ferro-chrome with a carbon content by weight of max. 0,5 % (low carbon ferro-chrome) originating in Kazakhstan, Russia and Ukraine

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 consultation within the Advisory Committee as provided for under the abovementioned Regulation,

Whereas :

A. PROCEDURE

(1) In June 1992, the Commission received a complaint lodged by the *Comité de Liaison des Industries de Ferro-Alliages de la Communauté Économique Européenne* on behalf of the sole Community producer of low carbon ferro-chrome. The complaint contained evidence of of dumping of the said product and of material injury resulting therefrom which was considered sufficient to justify the initiation of a proceeding.

(2) 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 of low carbon ferro-chrome, originating in Kazakhstan, Russia and Ukraine, falling within CN codes 7202 49 10 anbd 7202 49 50, and commenced an investigation.

(3) The Commission officially informed the exporters and importers known to be concerned, the representatives of the exporting countries and the complainant. Parties directly concerned were given the opportunity to make their views known in writing and to request a hearing.

(4) Seven of the companies which had received a questionnaire for importers replied within the deadline set by the Commission ; of those companies only one indicated that it was an importer of the product under consideration. Since the volume of the imports has small in relation to the total imports, they could not be considered representative of the exports in question. Of the six companies which received a questionnaire for exporters only one replied, but gave not details of its exports to the Community. Several associations representing importers, traders and consumers of low carbon ferro-chrome requested and were granted a hearing.

(5) Due to the lack of cooperation, the Commission could only use, for its preliminary determination, the trade statistics of the Community, certain information given by interested parties and the information supplied by the Community producer Elektrowerk Weiweiler GmbH, Eschweiler, Germany, which was verified at the premises of that company.

(6) The investigation of dumping covered the period from 1 July 1991 to 30 June 1992 ('the investigation period').

B. PRODUCT UNDER INVESTIGATION — LIKE PRODUCT

1. Origin of the imported product

(7) The three exporting countries concerned, which had formerly belonged to the Soviet Union, became independent at the beginning of 1992. The situation is not yet reflected in the import statistics of the Community where, for the period under consideration, figures still refer to the former Soviet Union. However, since the Commission has no knowledge of any producer operating outside Kazakhstan, Russia and the Ukraine in the territory of the former Soviet Union and since no interested party was able to provide such information, it is provisionally concluded that the imports coming from the former Soviet Union originate in the three States concerned.

2. Product description

(8) Ferro-chrome with a carbon content of max. 0,5 % (low carbon ferro-chrome) is an alloy of iron and chromium produced by reducing chromium ores with silicon and/or carbon in an electric furnace. It

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 195, 1. 8. 1992, p. 6.

is produced in a two-stage (sometimes even a three-stage) process and the chromium content of the alloy varies according to the type of ore used. The carbon content is determined by the materials added during the second stage of the production process. However, the percentage of carbon in the slabs at the end of the melting process varies significantly and the slabs which are subsequently crushed into different sizes are therefore classified by reference to the carbon content.

The prices for low-carbon ferro-chrome are normally expressed in a value per kilogram of chromium contained in the alloy and vary due to the differences in the carbon content (the lower the carbon content the higher the price). This price difference is not caused by a difference in the cost of production, which is virtually the same for all kinds of ferro-chrome with a carbon content below 0,5 %, but represents a premium for the producer's production know-how and reflects the cost savings for the consumer of the product, since the use of ferro-chrome with a higher carbon content requires further treatment of the product.

(9) Low carbon ferro-chrome is mainly used for the production of high-tensile structural and heat and acid resistant steel containing a high chromium content. It is also used for adjustment of the chromium content in stainless steel and must always be used for steel where, for plant reasons, removal of carbon is not possible during steel production. Those different uses of low carbon ferro-chrome are independent of differences in the precise carbon content and products with different grades of carbon content are to a large extent interchangeable.

(10) One interested party argued that due to the price differences determined by its carbon content, low carbon ferro-chrome could not be regarded as a single product. However, given the interchangeability of the product irrespective of the prices differences, the Commission provisionally established that the different grades of low carbon ferro-chrome were sufficiently alike to constitute one single product.

3. Like product

(11) The facts as described above apply not only to the imported products originating in the countries concerned but also to that produced in the Community and in other third countries. The Commission therefore concludes that low-carbon ferro-chrome produced in the Community and elsewhere has the same basic chemical and physical characteristics and is sufficiently alike to constitute a 'like product' within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

C. COMMUNITY INDUSTRY

(12) For the investigation period, Elektrowerk Weisweiler GmbH was the sole Community producer of the product in question. Two other Community producers, Falk in Italy and Lippendorf in Germany, had to give up their production between 1988 and the beginning of the investigation period.

(13) One interested party alleged that the complainant, or a company related to it, had imported low-carbon ferro-chrome from the countries concerned and that the complainant should therefore be excluded from the Community industry, in accordance with Artice 4 (5) of Regulation (EEC) No 2423/88. That party was, however, unable to submit any evidence supporting its allegation nor was any such evidence found during the investigation.

D. DUMPING

1. Normal value

(14) Since all three countries concerned are non-market economy countries, normal value had to be determined according to Article 2 (5) of Regulation (EEC) No 2423/88, i. e. either on the basis of data pertaining to a market-economy third country (analogous country) or, if such data do not provide an adequate basis, on the basis of prices paid or payable in the Community. As analogous country the complainant proposed South Africa. The Commission sent a questionnaire to the South African producer of ferro-chrome which despite several attempts by the Commission to obtain information, did not reply. Subsequently, the Commission requested information from a producer of ferro-chrome in Zimbabwe but that producer did not reply, either.

(15) Under the circumstances and in view of the difficult situation of the Community producer, the Commission decided not to delay further the proceeding and to determine provisionally the

normal value on the basis of the data in its possession, i. e. the cost of production of the South African producer of low-carbon ferro-chrome as given by the complainant, to which a margin of 5 % for profit was added. Given the similarity in access to raw materials and the competitive situation on the South African market which guaranties that prices and costs are appropriate and not unreasonable, the Commission considered that South Africa was a reasonable choice as analogous country. The Commission notes that the use of the prices in the Community would have led to a result less favourable for the exporters concerned.

Since one interested party alleged that the ferro-chrome exported from the countries in question were not crushed to any specific sizes the Commission excluded the cost of crushing of the product from its provisional calculation of the normal value.

2. Export price

(16) Since no exporter cooperated, the Commission used the average import price of the Community trade statistics as a basis for the calculation of the export price. As indicated above (see recital (7)) no distinction is made in those statistics between the countries in question. Therefore, for its provisional determination, the Commission had to use the same export price for the three exporting countries.

3. Comparison

(17) Since ferro-chrome is normally sold at a price based on its chromium (see recital (8)), the Commission compared normal value and export prices on the basis of the net chromium content of the corresponding product. To this end it assumed, for the exported goods, a chromium content of 68 % and, for the South African product, a content of 59 %. This is accepted in the industry as a reasonable ratio for each of these products.

(18) In order to establish provisionally the normal value at ex-works level and to exclude any possible differences in payment terms and transport costs, the Commission disregarded any costs in respect of transport and financing included in the production costs of the South African producer and adjusted the export price to a level fob exporting country by a reasonable amount for transport.

4. Dumping margin

(19) The comparison of the average export price on a month by month basis with the normal value shows the existence of dumping in respect of low carbon ferro-chrome originating in Kazahstan, Russia and Ukraine, the margin of duping being equal to the amount by which the normal value exceeded the price for export to the Community.

(20) The dumping margin amounts to ECU 0,406 kg chromium contained in the product exported, which corresponds to ECU 0,276 per kilogram of low carbon ferro-chrome and to 41,3 % of the cif value, free at Community frontier.

E. INJURY

1. Injury factors

1.1 *Development of import quantities and market shares*

(21) Imports from the countries in question increased from 4 553 tonnes in 1988 to 6 772 tonnes in 1990 and to 11 748 tonnes in the investigation period. The market shares for these countries increased from 7,6 % in 1988 to 10,7 % in 1990 and 18,3 % in the investigation period.

1.2 *Sales quantities and market shares of Community industry*

(22) Despite the slight increase of the consumption in the European Community from 59 730 tonnes in 1988 to 63 442 tonnes in 1990 and to 64 166 tonnes in the investigation period, the sales of the Community industry decreased from 19 254 tonnes in 1988 to 14 554 tonnes in 1990 and to 10 362 in the investigation period and its market shares decreased from 32,2 % in 1988 to 22,9 % in 1990 and to 16,2 % during the investigation period.

(23) This reduction in quantities and market shares was partly due to the fact that one Italian and one German producer gave up production at the end of 1990 (see recital (12)). The remaining Community producer, however, was unable to gain from those closures since its sales quantity decreased significantly between 1990 and the investigation period and its market share decreased considerably during the same period.

1.3 *Price undercutting*

(24) In order to establish whether there was evidence of price undercutting existed, the Commission compared the selling prices of the Community producer adjusted downwards to exclude costs for crushing (see recital (15)) with the average import prices from the countries concerned adjusted upwards by 8 % import duty and an estimated importer's margin of 20 % of the value, including the duty. On this basis the comparison showed a margin of undercutting of ECU 0,53 kg chromium which corresponds to 54 % of the CIF Community frontier price.

1.4 *Profitability and prices of the Community producer*

(25) The financial results for the Community sales of the Community producer turned from a small profit in 1988 into a small loss in 1990 and into a big loss during the investigation period.

(26) The investigation showed that the prices charged by the producer on its major markets fell constantly during the investigation period. The average decrease in price between July 1991 and June 1992 amounted to 15 %.

1.5 *Stocks*

(27) The stocks of the Community producer decreased between the end of the financial year 1988 and the end of 1990 by 33 index points (index 1988 = 100) and increased from then on till the end of the investigation period by 66 index points.

1.6 *Employment*

(28) The Community producer reduced its personnel between the end of 1988 and the end of 1990 by 6 % and between then and the end of the investigation period by another 4 %.

2. Conclusion on injury

(29) Taking into account the reduction in sales volume and market share combined with the increase of stocks and the erosion of its prices which led to the deterioration of the profitability of the sales in the Community, the Commission provisionally determined that the Community producer had suffered material injury.

3. Causality

3.1 *Effects of imports*

(30) In the view of the significant increase in quantities and market shares together with the high level of price undercutting which, in a transparent market with a limited number of operators, put the Community producer in a precarious competitive position, the Commission concluded that the imports in question has caused injury to the Community industry.

3.2. *Other factors*

(31) One interested party alleged that the injury suffered by the Community producer was caused by imports from South Africa and Zimbabwe since the producers in these countries enjoy comparative advantages in material supplies, energy and labour costs.

(32) The import statistics of the Community, however, do not confirm this allegation. Imports originating in South Africa decreased from 8 377 tonnes in 1988 to 5 906 tonnes in 1990 to 5 475 tonnes during the investigation period and those originating in Zimbabwe after having increased from 12 201 tonnes in 1988 to 16 237 tonnes in 1990 decreased also to 10 813 tonnes in the investigation period. The market shares of those countries fell accordingly.

(33) Furthermore a comparison of the import prices from these countries with the prices of the Community producer in the same manner as described in recital (24) (but without an adjustment for crushing) showed no undercutting for the imports form from South Africa and only limited undercutting (6,7 %) for those from Zimbabwe.

(34) It was further alleged that the Community producer was affected by a change in the technology of stainless steel production which had led to a reduction in the consumption of low carbon ferro-chrome in the Community. That allegation is not confirmed by the investigation of the Commission which showed rather a slight increase in consumption since 1988.

(35) As regards imports from other third countries, the Commission found that the total amount of such imports increased significantly. However, it was not possible to allocate a large part of these imports to specific countries since the Community's trade statistics, following requests from the importers concerned, reported them under the country heading 'Secret'. In comparing the average import prices for those quantities with those from the free

countries concerned, the Commission noted a certain similarity in price levels. In addition, it was noted that in Member States where the volume of the 'secret' imports was high, no imports have been reported from the countries under consideration. Therefore, it cannot be ruled out that significant quantities of 'secret' imports originate in these countries, which would increase the volume and the market share of the dumped imports. The remaining third country imports account for only 10 % of the Community market. While these imports may also have contributed to the difficulties of the Community producer, this cannot detract from the fact that the injury caused by the dumped imports, taken in isolation because of their increasing market share and their low prices, has to be qualified as material.

3.3 *Conclusion*

(36) Under these conditions, the Commission provisionally concludes that the dumped imports from Kazakhstan, Russia and the Ukraine have caused material injury to the Community industry.

F. COMMUNITY INTEREST

(37) In assessing the Community interest, the Commission considers that to stop distortion of competition arising from unfair commercial practices and thus to re-establish open and fair competition on the Community market — which is the very purpose of anti-dumping measures — is in the general interest of the Community as stated in Article 3 (f) of the EEC Treaty. Moreover, examination of the pricing behaviour of the exporters concerned and the Community industry's position leads to the conclusion that the remaining Community producer will have to close its factory in the near future if no measures are imposed on imports of low carbon ferro-chrome from the countries concerned. This would not only put the employment of more than 300 people at stake but would leave the Community totally dependent on imports for a product which is recognized as a product of strategic importance for which some Member States (the United Kingdom and France) have developed a national stockpiling programme.

(38) Furthermore, it should be noted that the Community producer has made considerable efforts to develop what is probably the most energy-efficient production process in the market and has automated its production to such an extent that it could compete with any other producer operating under market economy conditions. It, is, however, impossible for this company to complete with the low prices charged by the exporters located in the free countries concerned since their prices bear no relationship to the cost of production of the exported goods.

(39) The association defending the interests of the consumers of ferro-chrome alleged at its hearing that the imposition of duties on imports of low-carbon ferro-chrome originating in the three countries concerned would put up the competitiveness of the stainless steel industry at risk. Since this association was unable to substantiate the claim in any way and did not give any evidence as to the extent to which a price increase in ferro-chrome from the three countries concerned would affect the competitiveness of these industries, the Commission requested and received information from the complainant concerning the impact of the prices for low carbon ferro-chrome on stainless steel production. This information showed that on the German market, which represents about 30 % of the total Community market, in the first nine months of 1992 a maximum of 1 kg of low carbon ferro-chrome had been used for the production of 1 000 kg of stainless steel, an incidence of 0,1 %. Information form other sources showed even an incidence of as little as 0,02 %. Under these conditions anti-dumping measures against imports of low-carbon ferro-chrome from the countries concerned cannot be considered to have the potential to weaken the competitiveness of the stainless steel industry in the Community.

(40) In addition, the Commission received evidence that the demise of the Community producer would cause difficulties for several stainless steel producers which were dependent on certain specialized products for which the Community producer is the sole source of supply.

(41) The Commission therefore provisionally concludes that it is in the interests of the Community to protect the remaining Community producer against unfair competition from the countries concerned in order to maintain efficient and technically advanced production in the Community.

G. PROVISIONAL DUTY

1. Amount of duty

(42) In examining whether the provisional duty should be equal to the dumping margin found or whether a lower duty would be sufficient to remove the injury, in accordance with Article 13 (3) of Regulation (EEC) No 2423/88, the Commission compared the dumping margin with the margin of price-undercutting — the major reason for injury — at CIF level. Since price undercutting exceeded significantly the dumping margin, the duty has to be imposed at the level of the latter.

2. **Form of duty**

(43) The exporters concerned sell, besides low-carbon ferro-chrome a variety of other products to importers in the Community. In order to minimize the risks that the effects of the duty might be evaded by price manipulation, it is considered appropriate to impose the duty in form of a specific amount per kilogram. Provisional anti-dumping duties on the imports of low carbon ferro-chrome with a carbon content of a maximum 0,5 % at the level of ECU 0,276 per kilogram of low-carbon ferro-chrome imported should therefore be imposed.

(44) A period should be fixed within which interested parties 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 for the purpose of any definitive measure which the Commission may propose,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of ferro-chrome with a carbon content by weight of max. 0,5 % falling within CN codes 7202 49 10 and 7202 49 50, originating in Kazakhstan, Russia and Ukraine.

2. The duty shall be ECU 0,276 per kilogram net.

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 security, equivalent to the amount of the provisional duty.

Article 2

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 orally by the Commission within one month of the date of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the day following 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 of this Regulation 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, 30 March 1993.

For the Commission

Leon BRITTAN

Member of the Commission