COMMISSION REGULATION (EC) No 1611/2003

of 15 September 2003

imposing provisional anti-dumping duties on imports of certain stainless steel cold-rolled flat products originating in the United States of America

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 1972/2002 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Present investigation

Initiation

(1) On 4 November 2002 a complaint was lodged by the European Confederation of Iron and Steel Industries (Eurofer), on behalf of producers representing a major proportion, in this case more than 80 %, of the Community production of certain stainless steel cold-rolled flat products. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(2) Consequently, on 17 December 2002, the Commission announced by a notice ('notice of initiation') published in the *Official Journal of the European Communities* [3] the initiation of an anti-dumping proceeding with regard to imports into the Community of certain stainless steel cold-rolled flat products originating in the United States of America (hereinafter, the USA).

Investigation

(3) The Commission officially advised the exporting producers, the importers and the users known to be concerned, as well as the representatives of the exporting country concerned and the complainant Community producers, about the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(4) The Commission sent questionnaires to all Community producers, all exporters/producers, all importers and all users and providers of raw materials known to be concerned, as well as to all parties which made themselves known within the deadline set out in the notice of initiation. Replies to these questionnaires were received from six Community producers, one exporting producer, six related importers and seven users of certain stainless steel cold-rolled flat products. No unrelated importer or provider of raw materials replied to the questionnaire.

(5) The Commission sought and verified all the information deemed necessary for the purpose of a provisional determination of dumping, injury and Community interest. Verification visits were carried out at the premises of the following companies:

— Community producers

  — Ugine, SA, France

  — ThyssenKrupp, Acciai Speciali Terni, SpA, Italy

  — ThyssenKrupp Nirosta GmbH, Germany

— exporting producers

  — AK Steel Corporation, Middletown, Ohio, United States of America

— related importers

  — AK Steel Limited, Hertfordshire, United Kingdom.

(6) The investigation of dumping and injury covered the period from 1 January 2002 to 31 December 2002 ('the investigation period' or 'the IP'). As for the trends relevant for the assessment of injury, the Commission analysed the period from 1999 to the end of the investigation period ('the period considered').

(7) Upon initiation, the Commission advised all parties that, since initiation took place just before the end of the calendar year, it was more appropriate to select an investigation period coinciding with the calendar year, rather than the 12 months immediately prior to initiation, thus facilitating both the reporting by companies and the verification by the Commission. No party objected to this decision.

2. Product concerned and like product

General

(8) Cold-rolled flat products of ferritic stainless steels are manufactured in stainless steel plants according to the following process:

— melting of raw materials in electric furnace,

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 314, 17.12.2002, p. 3.

— decarburation and adjustment of composition,

— continuous casting in slab form,

— hot rolling, annealing and pickling,

— cold rolling,

— annealing and pickling,

— slitting to width required,

— packing and delivery.

(9) Cold-rolled flat products of ferritic stainless steels are mainly used in silencers and exhaust-gas emission-control systems by the automotive industry. Therefore, the most important use of these products is related to the manufacturing of exhaust-system components. Other important uses of cold-rolled flat products of ferritic stainless steel are household and automotive applications other than the mentioned exhaust systems.

Product concerned

(10) The product concerned by this proceeding is certain stainless steel cold-rolled flat products, i.e. chromium-ferritic steel, containing less than 0,15 % of carbon and 10,5 % or more and 18 % or less of chromium, flat rolled, not further worked than cold rolled, of stainless steel containing by weight less than 2,5 % of nickel in the standardised grades AISI 409/409L (EN 1.4512), AISI 441 (EN 1.4509) and AISI 439 (EN 1.4510), originating in the United States of America. Due to its characteristics, the product concerned is mostly used by the automotive industry for the production of exhaust systems. It falls within CN codes ex 7219 31 00, ex 7219 32 90, ex 7219 33 90, ex 7219 34 90, ex 7219 35 90, ex 7220 20 10, ex 7220 20 39, ex 7220 20 59 and ex 7220 20 99. All product types have the same basic physical, technical and chemical characteristics and are therefore one product.

Like product

(11) It is provisionally determined that the product produced in the United States of America and sold to the first independent customers in the Community has the same basic physical, technical and chemical characteristics as the product sold on both the USA domestic market and that produced by Community producers and sold on the Community market. All these products were therefore provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

B. **DUMPING**

(12) One company, representing more than 80 % of exports to the Community of the product concerned originating in the United States of America, replied to the questionnaire for exporting producers. Six companies in the Community related to this exporting producer also replied to the questionnaire for related companies. Another exporting producer informed the Commission of its willingness to cooperate but did not provide a reply to the questionnaire. It was therefore considered to be non-cooperating.

1. **Normal value**

(13) As far as the determination of normal value is concerned, the Commission first established whether the cooperating exporting producer's total domestic sales of certain stainless steel cold-rolled flat products were representative in comparison with its total export sales to the Community.

(14) The company reported domestic sales of the product concerned made by two business locations (North and South). However, it was found that most sales made by South were not sales of the product concerned. In addition, the company did not supply cost information for products sold by this location. Therefore, the few sales of the product concerned by South which represented less than 0,1 % of total quantities of the product concerned sold domestically were disregarded. Indeed, the remaining domestic sales were largely representative and, given their negligible volume, the inclusion of these sales would not have had any impact on the dumping calculation. Consequently, and in accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative since the total domestic sales volume of the exporting producer was at least 5 % of its total export sales volume to the Community.

(15) The Commission subsequently identified those types of certain stainless steel cold-rolled flat products, sold domestically by the company, that were identical or directly comparable with those types sold for export to the Community.

(16) For each type sold by the exporting producer on its domestic markets and found to be directly comparable with the type sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of certain stainless steel cold-rolled flat products were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type of certain stainless steel cold-rolled flat products exported to the Community.

(17) An examination was also made as to whether the domestic sales of each type could be regarded as having been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers of the type in question. Where the sales volume of certain stainless steel cold-rolled flat products, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales made during the IP, irrespective of whether these sales were profitable or not. Where the volume of profitable sales of certain stainless steel cold-rolled flat products represented 80 % or less of the total sales volume, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only, provided that these sales represented 10 % or more of the total sales volume.

(18) In cases where the volume of profitable sales of any type of certain stainless steel cold-rolled flat products represented less than 10 % of the total sales volume, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(19) Wherever domestic prices of a particular type could not be used to establish normal value, another method had to be applied. In view of the fact that no other exporting producer decided to cooperate in this proceeding, no information was available to the Commission regarding the domestic prices of another producer. Consequently, and in the absence of any other reasonable method, constructed normal value was used.

(20) In all cases where constructed normal value was used and in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses ('SG&A') and a reasonable margin of profit.

(21) To this end, the Commission examined whether the SG&A incurred and the profit realised by the exporting producer concerned on the domestic market constituted reliable data. Actual domestic SG&A expenses were considered reliable since the domestic sales volume of the company concerned could be regarded as representative. The domestic profit margin was determined on the basis of domestic sales made in the ordinary course of trade.

2. **Export price**

(22) All export sales of the product concerned to the Community were made via a related importer, which resold the product to both related and unrelated customers. Those related customers, in turn, resold the product concerned to other independent customers. Consequently, pursuant to Article 2(9) of the basic Regulation, the export price was constructed on the basis of the price at which the imported products were first resold to an independent buyer. Adjustments were made for all costs incurred between importation and resale by those importers, including SG&A costs, and assuming a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation. In the absence of any other more reliable information, the reasonable profit margin was provisionally estimated at 5 %. This was considered appropriate for this type of business.

3. **Comparison**

(23) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

(24) Adjustments to the normal value were claimed for discounts, rebates, inland freight, credit, after-sales expenses, technical support, customer R&D, indirect selling expenses and differences in variable costs of manufacturing.

(25) Regarding the allowances for technical support, customer R&D and indirect selling expenses, it could not be concluded, on the basis of the information made available, that these factors affected price comparability, in particular the claim that customers consistently paid different prices due to these factors. In addition, it could not be demonstrated that these expenses related exclusively to sales of the product concerned in the domestic market and that they did not benefit other products and/or other markets. On the basis of the above the allowances claimed had to be provisionally rejected, since they did not meet the requirements of Article 2(10).

(26) The company also claimed an allowance for differences in variable costs of manufacturing between domestic and export products. It should be noted that the comparison between domestic and export prices was made on the basis of identical or comparable types, i.e. on the basis of the same product characteristics. Consequently, this allowance was found to be unjustified and is thus provisionally rejected.

(27) Adjustments to the export price were made for ocean freight, inland freight and credit.

4. **Dumping margin**

(28) According to Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price. The provisional dumping margin expressed as a percentage of the cif import price at the Community border is:

— AK Steel Corporation, Middletown, Ohio, United States of America: 69,7 %.

(29) For those producers in the United States of America which neither replied to the Commission's questionnaire nor otherwise made themselves known, a 'residual' dumping margin was determined in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(30) In this case, since one company deliberately refrained from cooperating, the residual dumping margin was determined on the basis of the highest dumped export sales to the Community made in representative quantities. This approach was considered necessary in order to avoid giving a bonus for non-cooperation. On this basis, the residual provisional dumping margin, expressed as a percentage of the cif import price at the Community border, is 128,7 %.

C. **INJURY**

1. **Introduction**

(31) For the purpose of establishing whether or not the Community industry had suffered injury and for determining consumption and the various economic indicators relating to the situation of the Community industry, it was examined whether, and to what extent, the subsequent use of the Community industry's production of the product concerned had to be taken into account in the analysis.

(32) Indeed, the product concerned is sold by the Community industry to both (a) unrelated entities and (b) to entities in the same group of companies ('related entities'). As concerns related entities, there are two different categories: (i) entities which purchase the product concerned and use it as raw material for manufacturing a different product (mainly tubes), and (ii) entities which purchase the product concerned for its further processing according to the needs of the first independent customer whilst not transforming it into a different product altogether ('service centres').

(33) In this context, sales of the product concerned for use as raw material to manufacture other products for companies in the same group shall be considered as 'captive use', in so far as at least any of the following two conditions occur: (i) sales are not made at market prices or (ii) the customer within the same group of companies does not have a free choice of supplier. On the other hand, sales to unrelated customers are provisionally considered to form the 'free market'. In the course of the investigation it was provisionally found that sales to related entities which purchase the product concerned as raw material for manufacturing a different product had to be considered as captive sales; indeed although sales may be made at arms' length conditions, it was found that pursuant to the commercial policy of the companies, these related entities did not have a free choice of supplier.

(34) This distinction is relevant for the injury analysis, as products destined for captive use were found to be only indirectly affected by imports, as sales to captive customers are not exposed to direct competition with the USA imports. By contrast, in the case of the free market, sales were found to be in direct competition with imports of the product concerned.

(35) In order to provide as complete a picture as possible of the situation of the Community industry, data were obtained and analysed, to the extent possible, for the captive and free market taken together, and it was subsequently determined whether products were destined for captive use or for the free market. Indeed, production, capacity, capacity utilisation rates, investments, prices, profitability, cash flow, return on capital employed, ability to raise capital, stocks, employment, productivity, wages and magnitude of the dumping margin were analysed according to the complete activity regarding the product concerned. On the basis of the investigation, it was provisionally found that the abovementioned economic indicators could best be analysed by reference to both the free and captive markets, as in the present proceeding, the evolution of said indicators will not be affected by the fact that sales are addressed to either the free or the captive market.

(36) However, as regards the other injury indicators relating to the Community industry (i.e. sales, market shares and consumption) it was provisionally found that a meaningful analysis was possible only in respect of the situation on the free market, as these indicators can only be analysed in a meaningful way in a competitive environment.

2. **Definition of the Community industry**

(37) Of the six European Community producers of the product concerned, the following three have supported the complaint:

— Ugine, SA, France (UGINE),

— ThyssenKrupp Acciai Terni, SpA, Italy (TKAST),

— ThyssenKrupp Nirosta GmbH, Germany (TKN).

(38) As these three complainant cooperating Community producers represented 85 % of the Community production of the product concerned, they constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

3. **Community consumption**

(39) Community consumption was established by adding together the volumes of sales on the free Community market of the Community industry, the sales volume of the remaining producers on the Community market, as contained in the responses to the questionnaires supplied by said producers and the volume of imports. The volume of imports was determined on the basis of Eurostat figures corresponding to the relevant CN codes in the present proceeding. Taking into account that these CN codes also include products other than the one concerned, in certain instances an apportionment of the import data on the basis of criteria set out in the complaint was made.

(40) Apart from the companies which constitute the Community industry and the other Community producers, the most significant players in the EU market for the product concerned are USA and Japanese companies. Imports from Japan represented 3 % of the free market during the IP.

(41) On this basis, Community consumption has increased from 157 099 tonnes in 1999 to 182 679 tonnes in the IP, i.e. an increase of 16 %.

4. **Imports from the country concerned**

Volume and market share ([1])

(42) Imports of the product concerned originating in the USA significantly increased in volume by 95 % throughout the period concerned. Sharp increases in imports in 2000 and 2001 were registered (85 % for 2000 and 43 % for 2001). In the IP imports decreased by 14 % but still represented more than the double of the 1999 volume. As a result, the share of the free market increased to 12-14 % over the same period.

Table 1

	1999	2000	2001	IP
Market Share USA Imports	4 to 6 %	9 to 11 %	15 to 17 %	12 to 14 %
Index	100	154	251	195

Prices

(43) The weighted average price of imports originating in the USA increased by 19 % between 1999 and the IP.

Undercutting

(44) The Commission examined whether the cooperating exporting producer in the country concerned undercut the prices of the Community industry during the IP.

([1]) For reasons of confidentiality ranges are given.