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(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 560/2002
of 27 March 2002
imposing provisional safeguard measures against imports of certain steel products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3285/94 of 22 December 1994 on common rules for imports and repealing Regulation (EC) No 518/94 [1], as last amended by Regulation (EC) No 2474/2000 [2], and in particular Articles 6 and 8 thereof,

Having regard to Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) No 1765/82, (EEC) No 1766/82 and (EEC) 3420/83 [3], as last amended by Regulation (EC) No 1138/98 [4], and in particular Articles 5 and 6 thereof,

After consultations within the Advisory Committee established under Article 4 of Regulation (EC) No 3285/94 and of Regulation (EC) No 519/94 respectively,

Whereas:

PROCEDURE

(1) Several Member States ('the Member States concerned') have informed the Commission that trends in imports appear to call for safeguard measures; submitted information containing the evidence available as determined on the basis of Article 10 of Regulation (EC) No 3285/94 and Article 8 of Regulation (EC) No 519/94; and asked the Commission to impose provisional safeguard measures and to open a safeguard investigation.

(2) The Member States concerned claim that there have been recent substantial increases in imports of certain steel products and that the closure of the US market implied by US measures not only substantially denies the Community producers an important outlet for their exports, but also creates the conditions for a huge diversion of imports from the US to the Community market. They claim that this could lead to a dramatic increase in the existing high level of imports at low prices, exacerbating the already serious disruption on the Community steel market which threatens serious injury to the Community producers.

(3) The Member States concerned advise that the Community producers have submitted relevant information and urge the adoption of Community safeguard measures as a matter of urgency because any delay in their adoption would cause damage which it would be difficult to repair.

(4) The Commission has informed all Member States of the situation and consulted the Advisory Committee on Safeguards on the terms and conditions of imports, import trends and the threat of serious injury to each of the sectors concerned, the various aspects of the economic and commercial situation with regard to the products in question, and the measures to be taken.

(5) On 28 March 2002, the Commission published Notice of Initiation of a safeguard investigation concerning the products concerned.

(6) In order to make a preliminary determination as to whether there exists a threat of serious injury to the Community producers caused by increased imports arising from unforeseen developments, and a critical situation justifying the urgent adoption of provisional safeguard measures; the Commission has considered both the evidence submitted, and that already obtained from its own sources. In particular, it has examined the evidence submitted by the Member States concerned, and carried out on the spot investigations at the premises of the main Community producers.

(7) The Commission notes the recent announcement by the US of safeguard measures and the threat that this presents to the current critical situation of the Community producers.

[1] OJ L 349, 31.12.1994, p. 53.
[2] OJ L 286, 11.11.2000, p. 1.
[3] OJ L 67, 10.3.1994, p. 89.
[4] OJ L 159, 3.6.1998, p. 1.

PRODUCTS CONCERNED

(8) The products concerned are non alloy hot rolled coils, non alloy hot rolled sheets and plates, non alloy hot rolled narrow strip, alloy hot rolled flat products, cold rolled sheets, electrical sheets (other than GOES), metallic coated sheets, organic coated sheets, tin mill products, quarto plates, wide flats, non alloy merchant bars and light sections, alloy merchant bars and light sections, rebars, stainless bars and light shapes, stainless wire rod, stainless steel wire, fittings (< 609,6 mm), flanges (other than of stainless steel), gas pipes and hollow sections. The products concerned, together with the CN codes under which they are currently classified, are listed in Annex 1.

LIKE OR DIRECTLY COMPETING PRODUCTS

(9) The Commission's preliminary determination is that the products produced by the Community producers (hereinafter referred to as 'the like products') are like or directly competing with the products concerned. That is to say that despite differences in the production process, and some differences in terms of quality, they have the same basic physical characteristics and the same uses and are sold via similar or identical sales channels. Price information is readily available and the products concerned and the products of the Community producers compete mainly on price.

THE COMMUNITY PRODUCERS

(10) The Community producers are the members of the following industry associations: the European Confederation of the Iron and Steel Industry ('Eurofer'), the European Steel Tube Association ('ESTA'), Fachvereinigung Stahlflanschen e.V. ('FS') and the Defence Committee of the EU steel butt-welding fittings industry ('DCEU'). On behalf of their members, these industry associations have informed the Member States concerned, and the Commission, of their concerns, in particular, as to the impact of the safeguard measure against imports of certain steel products adopted on 5 March 2002 by the US President following an investigation under s.201 of the US Trade Act of 1974.

(11) These industry associations are representative of a major proportion of total Community production of the like and/or directly competing products.

— Eurofer represents almost 95 % of Community production of iron and steel products. The associated industries are located in almost all Member States;

— ESTA represents about 50 % of the tube producers in the Community, including eleven major producers. The associated industries are located in Greece, Italy, Luxembourg, the Netherlands, Spain, Sweden and the United Kingdom;

— FS represents about 50 % of Community production of carbon steel flanges. The associated industries are located in Germany, Italy, France, Spain and the United Kingdom;

— DCEU represents over 70 % of relevant Community production. The associated industries are located in Austria, France, Germany, Italy and the United Kingdom.

UNFORESEEN DEVELOPMENTS

(12) From 1998 onwards, in reaction to the Asian crisis [1], the US, which represents around one eighth of world steel consumption, began to make greater use of trade defence instruments in the steel sector with a view to protecting their domestic producers from competition, in a manner considered by many economic operators to be legally unjustified and economically excessive. Indeed, each of these measures which has been adjudicated in the WTO has been declared to be illegal.

(13) Table 1 shows the annual number of anti-dumping and countervailing duty final determinations made by the US between 1997 and 2001 in relation to the steel sector, and illustrates the increase in activity in the last three years.

Year	Anti-dumping duty	Countervailing duty
1997	5	0
1998	6	1
1999	16	7
2000	14	5
2001	26	5

(14) Of these measures, around half relate to products covered by this Regulation. As far as the year 2001 is concerned, around 82 % of the measures concern products under consideration in this Regulation. These measures had an increasingly discouraging effect on imports of steel products to the US. As a result of this increase in activity, the US had in place or pending some 164 anti-dumping measures, 41 countervailing duty measures and 2 safeguard measures relating to the steel sector by the end of 2001.

[1] The effects of the Asian crisis were felt around the world in 1998 and 1999. In particular, as Asian steel producers fought to maintain sales volumes in the face of the collapse of their domestic markets, they sought to open up new markets by offering low prices, and found the Community market to be an important outlet for their goods. In consequence, imports of the products concerned increased markedly in 1998, and prices fell sharply in 1999.

(15) In the course of 2001, the US also announced further broadly based, action in the steel sector. In January, the US opened an investigation into steel under section 223 of the US Trade Act of 1974. In July, the US ITC announced a broad ranging investigation into steel under section 202 of the Trade Act of 1974; and in December, the ITC recommended import restrictions across a broad range of steel products. These actions, which culminated in the import restrictions announced by the US President on 5 March 2002, further discouraged imports of steel products to the US.

(16) The increasingly protectionist stance adopted by the US in recent years in relation to steel led to a decrease in US steel imports of 33 % between 1998 and 2001.

INCREASE IN IMPORTS

(17) The Commission has carried out a preliminary analysis of the increase in imports to the Community of each of the products concerned over the same period (1998 to 2001), both in absolute terms, and relative to Community production and consumption. Imports of each of the products concerned increased considerably in that period.

(18) The Commission has made a preliminary determination that there is clear evidence that imports of 15 of the products concerned have recently increased in a manner which is sudden, sharp and significant. These are non alloy hot rolled coils, non alloy hot rolled sheets and plates, non alloy hot rolled narrow strip, alloy hot rolled flat products, cold rolled sheets, electrical sheets (other than GOES), tin mill products, quarto plates, wide flats, non alloy merchant bars and light sections, alloy merchant bars and light sections, rebars, stainless steel wire, fittings (< 609,6 mm) and flanges (other than of stainless steel). These products are referred to as 'the 15 products concerned'.

(19) In concrete terms, total imports of the 15 products concerned (specified in Annex 2) increased as follows.

Year	Imports of the 15 products concerned (mt)
1997	8,7
1998	12,1
1999	10,6
2000	12,5
2001	14,2

(20) Imports of the 15 products concerned, taken as a whole, increased by 2,5 % between 1998 and 2000, and by 13 % between 2000 and 2001 (the latest period for which statistics are available). Individual analysis of the increase in imports of each of these products clearly shows a recent increase in imports of each of the 15 products except 1 (product 9) in absolute terms. For all products (including product 9) there is a recent and sharp increase in imports relative to production. This recent increase ranges from 7,3 % to 209,7 % (see Annex 2).

(21) The Community steel market is characterised by long term relationships between producers and users; long term supply contracts; and the attachment of significant importance to security of supply. Given the nature of that market and its sensitivity to increased supplies, which lead immediately to price depression, and consequently losses for the Community producers, these increases in imports, either in absolute and/or relative terms, in respect of each of the 15 products concerned, must be considered sharp. In the context of imports having already reached historically high levels in 2000, the further increase in imports shown in Annex 2 in relation to each product is also significant.

THREAT OF SERIOUS INJURY

(22) In order to make a preliminary determination as to whether there is clear evidence of serious injury or threat of serious injury to the Community producers of each of the like products, the Commission has evaluated all relevant factors of an objective and quantifiable nature having a bearing on the situation of the Community producers. In particular, for each product concerned, the Commission has evaluated the development of imports, consumption, production, productivity, capacity utilisation, sales, market share, prices, profitability and employment for the years 1997 to 2001. The key factors are provided in Annex 1.

(23) Imports of 14 out of 15 of the products concerned grew in absolute terms between 2000 and 2001. The amount of growth varied as between products from 1 067 tonnes to 512 000 tonnes. The rate of growth in absolute terms varied between less than 1 % and 302 % depending on the product. For the 1 product whose imports fell marginally, the market share of imports increased substantially (by 8 %).

(24) Imports of each of the 15 products concerned also grew relative to consumption between 2000 and 2001. Relative growth varied between 2 % and 285 % depending on the product.

(25) Imports of each of the 15 products concerned also grew relative to production of the like or directly competing products by the community producers between 2000 and 2001.

(26) In general, consumption of the products concerned and the like products was stagnant or declining between 2000 and 2001. Consumption of 9 of the products fell in this period, whilst consumption of the remaining 6 grew.

(27) Production of the like products generally fell. Production of 11 of the like products fell, production of 3 of the like products increased marginally (less than 2 %) and production of 1 of the like products increased markedly.

(28) Productivity increased for 14 of the 15 products concerned. For the 1 product for which productivity fell, the Commission's preliminary analysis indicates that this was due to a fall in the volume of production.

(29) Capacity utilisation in relation to production of each of the like products generally decreased by between 5 % and 10 % from 2000 to 2001, although in 1 case it was virtually stagnant and in 2 cases it actually increased.

(30) Sales of the like products in the EU generally fell between 2000 and 2001. Nevertheless, in the case of 2 products sales increased (although in relation to each of those products, the Community producers suffered loss of market share).

(31) In each relation to each product, the Community producers suffered a loss of market share of between 1 % and 10 %.

(32) The price of most products fell between 2000 and 2001. In addition, of those products whose price rose in this period, in all but 3 cases, 2001 prices were lower than the price in 1997. In normal conditions of international trade, the forecast improvement in the Community consumer sector would enable the industry to improve its situation by raising prices. However, low priced imports, resulting from trade deviation, have prevented Community producers from doing so.

(33) Between 2000 and 2001, the profitability of the Community producers in relation to each like product has declined dramatically in all but 3 cases. In 2 of those cases, the Community producers are making a marginal profit (less than 2 %), and in 1 other they are incurring a material loss (− 8,2 %). This situation occurs against a background of already poor levels of profitability in previous years.

(34) Employment in the Community steel industry in relation to ECSC products has declined by 20 000 since 1997; and from 276 300 in 2000 to 270 000 in 2001. These trends appear to be broadly reflected in the information available on employment relating to each of the like products.

(35) For each of the 15 products concerned, the Commission has analysed the factors mentioned in recital 22 to determine what effect increased imports at low prices are having on the Community producers of the corresponding like product. In particular, the Commission notes that imports of each of the products concerned grew in absolute terms, and relative to consumption and production. The Community producers are suffering loss of market share in relation to each product and the prices of their products have also generally fallen or remain depressed. Further, in relation to most products their profitability has significantly declined in the last year although in relation to some it merely remains low.

(36) Based on its preliminary analysis, the Commission has made a preliminary determination that, in relation to each of the 15 products concerned, the Community producers are threatened with significant overall impairment in their position which is clearly imminent. It is anticipated that actual serious injury will occur even more rapidly both as a result of the announcement of US measures on 5 March, and of those measures being brought into force.

CAUSATION

(37) On the basis of the available information, the Commission has made a preliminary determination that there is clear evidence of a causal link between the reduction in US imports and growth in Community imports. This can best be explained by the fact that, for many steel producers, the US and the Community are their only viable export markets. In consequence, as both markets have the same types of industrial users, it is reasonable to conclude that steel imports diverted from the US market have been diverted to the Community market. Most of the third country producers affected by the US measures have exported to the Community for a number of years, and, more and more after the Asian crisis and the abovementioned US activities.

(38) The Commission has also made a preliminary determination that there is clear evidence of a causal link between increased volumes of imports of each of the 15 products concerned and reduced sales volumes of each of the like products. Despite minor differences in the production process, and some differences in terms of quality, both products have the same basic physical characteristics and the same uses and are sold via similar or identical sales channels. Price information is readily available and the products concerned and the like products compete mainly on price.

(39) Given those causal links, the Commission has made a preliminary determination that the Community producers are suffering reduced sales volumes and market shares due to increased imports arising as a result of trade deviation from the US.

(40) The Commission has made a preliminary determination that there is a causal link between the reduction in sales revenues achieved by the Community producers and the reduction in their profitability. Any reduction in capacity utilisation increases the unit cost of production. Therefore, any reduction in the quantity of goods produced and sold reduces profitability. In addition, fixed costs cannot be reduced quickly or on a short term basis.

(41) The Commission has also made a preliminary determination that there is a causal link between undercutting by the products concerned (i.e. selling at less than the actual price of the like products) and loss of sales revenues by the Community producers. In almost all cases, the products concerned were sold on the Community market at lower prices than the like products. Undercutting margins range up to 31 %.

(42) The Commission has also made a preliminary determination that there is a causal link between underselling of the products concerned (i.e. selling at less than a constructed price for the like product based on cost plus a reasonable profit margin) and loss of sales revenues by the Community producers. In the few cases where no undercutting was found, this was because the Community prices were depressed and sales earned no or only minimal profit (underselling margins range from 15 % upwards).

(43) The Commission therefore draws the preliminary conclusion that, in relation to each of the 15 products concerned, imports at low prices have caused and are causing — (1) a reduction in the volume of the like product sold by the Community producers; (2) a reduction in the prices at which the Community producers sold the like product; (3) a consequent reduction in the sales revenues of the Community producers and (4) a drastic reduction in the profitability of the Community producers. This has resulted in threat of serious injury to the Community producers.

OTHER FACTORS

(44) To ensure that the threat of serious injury is not attributable to other factors than the increase in imports, the Commission has carried out a preliminary analysis of other factors that may have contributed to the threat of serious injury suffered by the Community producers. These include the general downturn in the world economy in 2001; the short term economic slowdown resulting from the events of 11 September; and reduced exports by Community producers to the US.

(45) That preliminary analysis indicates that the increase in imports is the substantial cause of the threat of serious injury to the Community producers. Under normal market conditions, the Community industry has no excess capacity due to the deep restructuring it has undergone in recent years. The reduction in exports to the US market resulting from the actions of the US may have had an impact on the Community industry, but it clearly does not break the causal link between the deviation of traffic from the US and the serious injury which it threatens. This is clearly shown by a comparison of Community import volumes to export volumes. Nevertheless, a detailed examination of all factors which have, or may have, contributed to the injury will be undertaken in the course of the Commission's investigation.

CRITICAL SITUATION

(46) The Commission has made a preliminary determination that critical circumstances exist in which delay would cause damage which it would be difficult to repair. As indicated above and illustrated in detail by Annex 1, threat of serious injury is clearly imminent. Community producers are already suffering a decline, notably in production, sales and profitability, as a result of increased imports of the 15 products concerned.

(47) In relation to the like or directly competing products, production has fallen by 3 % between 2000 and 2001. Sales have fallen by 4 % in the same period, and the Community producers market share has declined. Profitability has also declined sharply in this period, and in many cases sales are being made at a loss. This decline is also reflected in a loss of employment in relation to production of the 15 products concerned. Employment across the industry has fallen from 276 500 in 2000 to 270 000 in 2001.

(48) Available information relating to the performance of the Community producers in the first quarter of 2002 indicates that production, sales and profitability continue to decline. Prior to 5 March, the Community producers were clearly already in a weak position. The existing increase in imports had lead to oversupply on the Community market; reductions in prices and threat of serious injury.