

COMMISSION DECISION No 1000/1999/ECSC

of 11 May 1999

amending Decision No 2277/96/ECSC on protection against dumped imports from countries not members of the European Coal and Steel Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 74 thereof,

(1) Whereas the Commission, by Decision No 2277/96/ECSC ⁽¹⁾, adopted common rules for protection against dumped imports from countries which are not members of the European Coal and Steel Community;

(2) Whereas the Council, by Regulation (EC) No 519/94 ⁽²⁾, as last amended by Regulation (EC) No 1138/98 ⁽³⁾, has adopted common rules for imports for certain third countries which are listed in Annex I thereto;

(3) Whereas Article 2(7) of Decision No 2277/96/ECSC lays down that, in the case of imports from non-market-economy countries and, in particular, those countries to which Regulation (EC) No 519/94 applies, normal value shall be determined on the basis of the price or constructed value in an analogue market-economy third country;

(4) Whereas the process of reform in Russia and the People's Republic of China has fundamentally altered their economies and has led to the emergence of firms for which market-economy conditions prevail; whereas both countries have consequently moved away from the economic circumstances which prompted the use of the analogue country method;

(5) Whereas the Community's anti-dumping practice under Council Regulation (EC) No 384/96 ⁽⁴⁾, as last amended by Regulation (EC) No 905/98 ⁽⁵⁾, was amended by that Regulation in order to be able to take account of the changed economic conditions to Russia and in the People's Republic of China; whereas, in particular, Regulation (EC) No 384/96 provides that normal value may be determined in

accordance with the rules applicable to market-economy countries in cases where it can be shown that market conditions prevail for one or more producers subject to investigation in relation to the manufacture and sale of the product concerned;

(6) Whereas Article 2(10) of Decision No 2277/96/ECSC provides for a limited number of allowances which can be made to the normal value and export prices before these are compared to establish whether dumping is taking place; whereas, since it is conceivable that differences in selling expenses, other than those listed in that Decision, may in certain circumstances affect price comparability, it is prudent to eliminate the exclusive nature of this provision in relation to allowances;

(7) Whereas the Community's anti-dumping practice under Regulation (EC) No 384/96 was amended by Regulation (EC) No 2331/96 ⁽⁶⁾ in order to clarify the requirements for an adjustment for differences in levels of trade when information on price effects for two levels of trade does not exist for the market concerned, as well as to provide for an adjustment in order to fine-tune the allocation of costs between different levels of trade on the domestic market of the exporting country;

(8) Whereas it is therefore desirable to align the relevant provisions of Decision No 2277/96/ECSC on those of Regulation (EC) No 384/96 as a matter of urgency, in order to ensure consistency in the application of the anti-dumping rules provided under the EC Treaty and the ECSC Treaty respectively,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Decision No 2277/96/ECSC is amended as follows:

⁽¹⁾ OJ L 308, 29.11.1996, p. 1.

⁽²⁾ OJ L 67, 10.3.1994, p. 89.

⁽³⁾ OJ L 159, 3.6.1998, p. 1.

⁽⁴⁾ OJ L 56, 6.3.1996, p. 1.

⁽⁵⁾ OJ L 128, 30.4.1998, p. 18.

⁽⁶⁾ OJ L 317, 6.12.1996, p. 1.

1. Paragraph 7 is replaced by the following:

'7 (a) In the case of imports from non-market-economy countries (*), normal value shall be determined on the basis of the price or constructed value in a market-economy third country, or the price from such a third country to other countries, including the Community, or, where that is not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin.

An appropriate market-economy third country shall be selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection. Account shall also be taken of time limits; where appropriate, a market-economy third country which is subject to the same investigation shall be used.

The parties to the investigation shall be informed shortly after its initiation of the market-economy third country envisaged and shall be given 10 days to comment.

(b) In anti-dumping investigations concerning imports from Russia and the People's Republic of China, normal value shall be determined in accordance with paragraphs 1 to 6, if it is shown, on the basis of properly substantiated claims by one or more producers subject to the investigation and in accordance with the criteria and procedures set out in subparagraph (c), that market-economy conditions prevail for this producer or producers in respect of the manufacture and sale of the like product concerned. When this is not the case, the rules set out under subparagraph (a) shall apply.

(c) A claim under subparagraph (b) shall be made in writing and shall contain sufficient evidence that the producer operates under market-economy conditions, that is if:

— decisions of firms regarding prices, costs and inputs, including for instance raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in this regard, and costs of major inputs substantially reflect market values,

— firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes,

— the production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market-economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts,

— the firms concerned are subject to bankruptcy and property law which guarantee legal certainty and stability for the operation of firms, and

— exchange-rate conversions are carried out at the market rate.

A determination whether the producer meets the abovementioned criteria shall be made within three months of the initiation of the investigation, after specific consultation of the Advisory Committee and after the Community industry has been given an opportunity to comment. This determination shall remain in force throughout the investigation.

(*) Including Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, North Korea, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.'

2. Paragraph 10 is amended as follows:

(a) Subparagraph (d) is replaced by the following:

'(d) Level of trade

(i) An adjustment for differences in levels of trade, including any differences which may arise in OEM (original equipment manufacturer) sales, shall be made where, in relation to the distribution chain in both markets, it is shown that the export price, including a constructed export price, is at a different level of trade from the normal value and the difference has affected price comparability which is demonstrated by consistent and distinct differences in functions and prices of the seller for the different levels of trade in the domestic market of the exporting country. The amount of the adjustment shall be based on the market value of the difference.

- (ii) However, in circumstances not envisaged under (i), when an existing difference in level of trade cannot be quantified because of the absence of the relevant levels on the domestic market of the exporting countries, or where certain functions are shown clearly to relate to levels of trade other than the one which is to be used in the comparison, a special adjustment may be granted.'
- (b) The following subparagraph is added:
- '(k) Other factors
- An adjustment may also be made for differences in other factors not provided for under

subparagraphs (a) to (j) if it is demonstrated that they affect price comparability as required under this paragraph, in particular that customers consistently pay different prices on the domestic market because of the difference in such factors.'

Article 2

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

It shall apply to all anti-dumping investigations initiated after the date of its entry into force.

This Decision shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 May 1999.

For the Commission

Leon BRITTAN

Vice-President
