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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 19 March 1998

terminating the reinvestigation commenced pursuant to Article 12 of Council Regulation (EC) No 384/96 of the anti-dumping measures applicable to imports of microwave ovens originating in the Republic of Korea

(98/225/EC)

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 amended by Regulation (EC) No 2331/96 [2], and in particular Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) In January 1996, the Council, by Regulation (EC) No 5/96 [3], imposed definitive anti-dumping duties on imports of microwave ovens (hereinafter referred to as 'MWOs') originating *inter alia* in the Republic of Korea.

2. Request for a review

(2) On 5 December 1996, a request for a review, pursuant to Article 12 of Regulation (EC) No 384/96 (hereinafter referred to as the 'Basic Regulation'), of the anti-dumping measures applicable to imports of MWOs originating in the Republic of Korea was lodged on behalf of: Cefemo (France), acting on behalf of its two parent companies, namely AEG (Germany) and Brandt (France); Candy (Italy); DeLonghi (Italy); and Moulinex (France). The collective output of MWOs of these Community producers constituted a major proportion of the total Community production of that product within the meaning of Article 5(4) of the Basic Regulation.

(3) In the request, it was alleged that the abovementioned anti-dumping measures concerning MWOs from the Republic of Korea had led to no movement, or insufficient movement, in resale prices or subsequent selling prices in the Community. To that end, the complainants submitted sufficient evidence on resale prices and subsequent selling prices before and after imposition of the anti-dumping duties.

B. REVIEW INVESTIGATION PURSUANT TO ARTICLE 12 OF THE BASIC REGULATION

1. Initiation of the investigation pursuant to Article 12

(4) On 18 January 1997, the Commission announced by a notice published in the *Official Journal of the European Communities* [4], the initiation of a review pursuant to Article 12 of the Basic Regulation of the anti-dumping measures applicable to imports of MWOs originating in the Republic of Korea, and commenced an investigation.

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 317, 6. 12. 1996, p. 1.
[3] OJ L 2, 4. 1. 1996, p. 1.
[4] OJ C 19, 18. 1. 1997, p. 3.

(5) The Commission officially advised the producers/exporters known to be concerned, the representatives of the exporting country and the complainant Community producers, of the initiation of the review. 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.

(6) The Commission sent questionnaires to all exporters known to be concerned, namely, Samsung Electronics Co., Ltd (hereinafter referred to as 'SEC'), Daewoo Electronics Co., Ltd. (hereinafter referred to as 'DWE'), LG Electronics Inc. (hereinafter referred to as 'LGE'), and Korea Nisshin Co., Ltd. (hereinafter referred to as 'Nisshin'). The Commission received replies from DWE, SEC and their related importers as well as from LGE within the time limit set. LGE declared that it had not exported the product concerned to the Community during the investigation period of the review (hereinafter referred to as the 'IP').

(7) Nisshin abstained from replying to the questionnaire. Consequently, in accordance with Article 18 of the Basic Regulation, Nisshin was considered to be a non-cooperating party and was informed accordingly. Findings for Nisshin were based on the best facts available.

(8) The Commission carried out verification visits at the premises of the following companies:

(a) *Producers/exporters in the Republic of Korea*

— Samsung Electronics Co., Ltd, Seoul,

— Daewoo Electronics Co., Ltd, Seoul,

— LG Electronics Inc., Seoul.

(b) *Importers related to the producers/exporters*

— Samsung Electronics France,

— Samsung Electronics United Kingdom,

— Daewoo Electronics SA, France,

— Daewoo Electronics Sales UK.

(9) Questionnaires were also sent to independent importers known to have imported MWOs from the Republic of Korea so as to ascertain the resale prices and/or subsequent selling prices of the product concerned before and after the imposition of the anti-dumping duties. The following independent importers received questionnaires:

— Amfo Electronics BV, Netherlands,

— Comet, United Kingdom,

— Dixons, United Kingdom.

However, none of these importers submitted information on their resale prices during the original investigation period (hereinafter referred to as 'OIP') and the IP.

(10) Interested parties were informed of the essential facts and considerations on the basis of which the Commission intended that the anti-dumping measures in force should remain unchanged and that the investigation concerning the review should be terminated, and were given an opportunity to comment. The parties' oral and written comments were considered and, where appropriate, the findings have been changed accordingly.

(11) The IP of the review investigation covers the period from 1 January to 31 December 1996. Information relating to the IP was used not only to determine the level of resale and subsequent selling prices after the imposition of anti-dumping measures but also to reassess export prices and to recalculate dumping margins.

(12) In establishing whether or not resale and subsequent selling prices had moved sufficiently, the price levels pertaining to the IP were compared to the corresponding price levels during the OIP which had covered the period from 1 October 1992 to 30 September 1993.

(13) Owing to the volume of the data gathered and examined, in particular in view of the high number of related importers and sales subsidiaries involved, the complexity of the analysis of the movement of the resale and subsequent selling prices, the numerous changes in the models exported in both investigation periods and the fact that normal values had to be re-examined, the investigation exceeded the normal period of six months provided for in Article 12(4) of the Basic Regulation.

2. **Registration of imports**

(14) In their replies to the questionnaires, two Korean producers/exporters provided information on revised normal values pursuant to Article 12(5) of the Basic Regulation.

(15) Accordingly, in April 1997, following receipt of the replies to the questionnaire, the Community industry submitted a request in accordance with Article 14(5) of the Basic Regulation so as to make imports into the Community of MWOs subject to registration. The request was based on the grounds that, since the re-examination of normal values could entail a longer reinvestigation period, it was necessary to register imports pending the outcome of the reinvestigation.

(16) On 25 June 1997, having concluded that sufficient grounds existed, the Commission, after consultation of the Advisory Committee, adopted

Regulation (EC) No 1144/97 [1] making imports of MWOs originating in the Republic of Korea subject to registration in order to ensure that, should the reinvestigation result in increased dumping, the amended anti-dumping measures could subsequently be applied against those imports from the date of such registration.

3. **Product concerned**

(17) The product concerned by the request and for which the review was initiated is the same as in the original investigation, namely microwave ovens for domestic use, currently classifiable within CN code 8516 50 00.

4. **Movement of resale prices in the Community**

(a) *Determination of the resale prices before and after the imposition of anti-dumping measures*

(18) In order to establish whether the measures had led to any movement or sufficient movement, the Commission sought information on resale prices and subsequent selling prices of MWOs in the Community before and after the imposition of anti-dumping measures.

(19) In this connection, the two cooperating Korean producers/exporters, namely DWE and SEC, which had exported the product concerned to the Community during the IP, provided information on resale prices for certain MWO models considered comparable to those exported and resold in the Community during the OIP by their related importers.

(20) Although information with regard to resale prices and/or subsequent selling prices was requested from independent importers known to have resold MWOs imported from the Republic of Korea before and after the imposition of anti-dumping measures, no such information was made available to the Commission. As a result, findings had to be made on the basis of the available information of the resale prices charged by the related importers.

(21) In its determination of whether or not resale prices had moved sufficiently, the Commission established, on a model basis, a benchmark price which could have been expected following the imposition of the anti-dumping measures, by adding to the resale prices of MWOs per model during the OIP, the applicable amount of the anti-dumping duty. In establishing the benchmark price, any changes in the selling, general and administrative expenses (hereinafter referred to as 'SG&A') incurred by the related sales subsidiaries in the Community between the OIP and the IP were taken into account.

(b) *Comparison*

(22) The abovementioned benchmark prices were compared to the resale price of MWO models sold during the IP, which, although not identical to those sold in the OIP, were considered comparable in terms of their main characteristics.

(23) The comparison revealed that, on a weighted average basis, the resale prices charged by DWE and SEC during the IP undercut the benchmark prices significantly.

(c) *Conclusion*

(24) The Commission concluded that the resale prices had not moved sufficiently to reflect the adoption of the anti-dumping measures and, therefore, that a reassessment of export prices was warranted.

(25) With regard to the above findings, one exporter argued that the decline in resale prices since the imposition of anti-dumping measures was mainly caused by changes in technology and consumer preferences in the Community leading to changes in the trading patterns and cost savings, which in their turn were reflected in significant changes of normal values which ought to be taken into account. To this end, both exporters had supplied complete information on revised normal values within the time limits set out by the Basic Regulation.

(26) In the light of the above, having determined that a reassessment of export prices was warranted, the Commission proceeded to extend the scope of the investigation in accordance with Article 12(5) of the Basic Regulation in order to include in the re-examination the normal values of MWOs exported by DWE and SEC.

(27) With regard to LGE, the investigation showed that no exports of MWOs had, indeed, been made to the Community during the IP. As a result, the Commission concluded that the reassessment of export prices was not appropriate for that company.

5. **Reassessment of export prices**

(28) Pursuant to Article 12(2) of the Basic Regulation, the Commission reassessed export prices in accordance with Article 2(8) and (9) of that Regulation.

(29) In cases where export sales were made direct to independent importers in the Community, export prices were determined on the basis of the prices paid or payable by these unrelated importers, in accordance with Article 2(8) of the Basic Regulation.

[1] OJ L 166, 25. 6. 1997, p. 1.

(30) In accordance with the provisions of Article 2(9) of the Basic Regulation, where exports were made to companies related to the exporting producer and located in the Community export prices were constructed on the basis of the price at which the imported product was first resold to an independent buyer, with adjustments for all costs incurred between importation and resale, including anti-dumping duties paid and a reasonable margin for profit. In the absence of any new information that profitability in this business sector had changed, it was considered reasonable to retain the profit margin of 5 % used in the original investigation.

(31) The SG&A expenses reported by the related importers were adjusted, when necessary, for costs related to MWO sales which were borne by the importer but paid by the producer/exporter, in accordance with Article 2(9) of the Basic Regulation.

6. **Recalculation of dumping margins**

(a) *Normal value*

(32) In order to recalculate the dumping margins pursuant to Article 2(2) of the Basic Regulation, the Commission first established whether the total domestic sales of MWOs by each of the two producers/exporters concerned were representative as compared to their export sales to the Community. It was found that both companies had domestic sales volumes substantially in excess of their export sales to the Community.

(33) Subsequently, it was examined whether each producer/exporter sold, on its domestic market, MWO models which were comparable to the exported models. It was found that several models were not comparable as they differed not only in their main characteristics, namely in capacity, functioning and operating system, but also in numerous other technical aspects. Since, for these models, no comparable models could be found by the other cooperating producer/exporter either, normal value had to be constructed for such models.

(34) For the remaining models, the Commission considered, on a model-by-model basis, whether sales in the domestic market were made in sufficient quantities and in the ordinary course of trade, as far as price was concerned. It was found that both companies had certain models for which domestic sales volumes were below 5 % of the comparable export sales. Thus, for these models normal value was also constructed in accordance with Article 2(3) of the Basic Regulation.

(35) The Commission then turned to consider whether those other models which were sold domestically in sufficient quantities, were also sold in the ordinary course of trade. In this connection, the Commission used information on the cost of production provided by the company for each model sold domestically. For certain models sold on average at a loss, normal values also had to be constructed. For other models sold on average above unit cost, normal value was established on the basis of the weighted average selling price of only the profitable sales, as these sales ranged between 80 % and 10 % of the total sales volume of the relevant model concerned.

(36) In constructing the normal value, each producer's/exporter's manufacturing cost for the MWO models exported to the Community, plus each producer's/exporter's SG&A expenses as incurred for all sales of the like product on the domestic market, and a reasonable margin for profit, were taken into account. The margin of profit was established on the basis of all MWO models which were sold profitably and in representative quantities by each producer on the domestic market.

Finally, in establishing normal value for the comparable MWO models sold domestically in sufficient quantities and in the ordinary course of trade, the weighted average domestic prices of each of the models were used.

(b) *Comparison*

(37) The weighted average normal value by model, as determined above, was compared at an ex-factory level with the export price on a weighted average basis.

(38) For the purpose of ensuring a fair comparison, due allowance in the form of adjustments was made for differences affecting price comparability. Those allowances which were claimed and demonstrated to affect price comparability were granted in accordance with Article 2(10) of the Basic Regulation. Thus, adjustments were made in respect of physical characteristics, import charges and indirect taxes, rebates, transport and other related costs, credit, after-sales costs as well as for differences in level of trade.

(i) Cooperating producers/exporters

(39) As far as the cooperating producers/exporters were concerned, the comparison between the re-examined normal values and the reassessed export prices did not reveal any increased dumping margins for either company as compared with those found in the initial investigation.

(ii) Non-cooperating producers/exporters

(40) In the case of Nisshin and any other Korean exporting producer which either failed to reply to the questionnaire or did not make itself known, findings were to be made on the basis of the facts available, pursuant to Article 18 of the Basic Regulation.

(41) In this respect, however, it was found that the export volume to the Community during the IP reported by SEC and DWE covered the totality of the imports of MWOs from the Republic of Korea as recorded by Eurostat. In those circumstances, the recalculation of dumping margins for the non-cooperating producers/exporters did not appear necessary.

C. **TERMINATION OF THE INVESTIGATION**

(42) Since the comparison of reassessed export prices and re-examined normal values has not shown any increased dumping margins, the review investigation should be terminated without changing the anti-dumping measures in force, in accordance with Article 12 of the Basic Regulation.

(43) The Advisory Committee has been consulted.

(44) In the light of the above, the Commission, in accordance with Article 12 of the Basic Regulation, concludes that the anti-dumping measures in force should remain unchanged and that the reinvestigation pursuant to Article 12 should be terminated,

HAS DECIDED AS FOLLOWS:

Sole Article

The reinvestigation concerning imports of microwave ovens falling within CN code 8516 50 00 and originating in the Republic of Korea is hereby terminated.

Done at Brussels, 19 March 1998.

For the Commission
Leon BRITTAN
Vice-President