COMMISSION REGULATION (EEC) No 1958/82

of 16 July 1982

imposing a provisional anti-dumping duty on imports of photographic enlargers originating in Poland and the USSR, accepting an undertaking and terminating the proceeding in respect of imports of photographic enlargers originating in Czechoslovakia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), as amended by Regulation (EEC) No 1580/82 (2), and in particular Articles 10 and 11 thereof,

After consultations within the Advisory Committee set up under Regulation (EEC) No 3017/79,

Whereas in August 1981 the Commission received a complaint lodged by the European Federation of Precision, Mechanical and Optical Industries (Eurom), on behalf of the quasi-totality of Community producers of photographic enlargers;

Whereas, since this complaint provided sufficient evidence of dumping and material injury resulting therefrom, the Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* (3), the initiation of a proceeding concerning imports of photographic enlargers for amateur use originating in Czechoslovakia, Poland and the USSR;

Whereas the Commission officially so advised the exporters known to be concerned, as well as the exporting countries and the complainants;

Whereas the Commission has given all parties directly concerned the opportunity to make known their views in writing and to be heard orally; whereas the exporter in the USSR did not take advantage of this opportunity; whereas the other exporters and several of the importers concerned have taken the opportunity to make known their views in writing; whereas the exporters in Czechoslovakia, Poland and two of the importers requested, and were granted, an opportunity to make known their views orally;

Whereas the Commission gave the importers Beroflex AG and Harwix AG, at their request, an opportunity to meet representatives of the complainant during which opposing views were presented and rebuttal argument put forward;

Whereas no information was submitted by, or on behalf of, any Community purchaser or consumer of photographic enlargers under investigation;

Whereas, in order to arrive at a preliminary determination of dumping and injury, the Commission sought to obtain and verify all information which it deemed to be necessary;

Whereas, in order to verify the export prices to the Community of the enlargers under investigation and the resale prices of these enlargers in the Community, the Commission carried out inspections at the premises of the principal importers concerned, namely Beroflex AG, Berlin; Foto Film Fischel BV, Amsterdam; Harwix AG, Hamburg; Orwo Photo BV, Hilversum; Prova srl, Milan; Technical and Optical Equipment Ltd, London;

Whereas the Commission requested and received detailed written submissions from the complainant Community producers with respect to the question of injury and causation thereof; whereas the Commission also carried out inspections at the premises of a number of complainant Community producers, namely Ahel sarl, Neuilly Plaisance; Durst Phototechnik srl, Bolzano; Kaiser Phototechnik GmbH, Buchen;

Whereas, in order to establish whether the abovementioned imports were dumped, the Commission had to take into account the fact that Poland, Czechoslovakia and the USSR are not market economy countries;

Whereas, for that reason, the Commission had to base its calculations on the normal value in a market economy country; whereas, in that connection, the complaint cited the Japanese export prices to the Community of the biggest Japanese producer;

Whereas the exporters did not dispute the choice of Japanese export prices to the Community as a basis for the determination of normal value;

Whereas the Commission has consequently based its preliminary determinations of normal value on average ex-works prices for export to the Community of the largest Japanese producer of photographic enlargers;

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No C 271, 23. 10. 1981, p. 4.

Whereas, since both the Czechoslovakian and Polish exporters sell a variety of models in the Community, the Commission established a normal value for each model, based in each case on the price of the Japanese enlarger with equivalent technical specifications; whereas this approach was not contested by either exporter;

Whereas, as regards equivalence of quality between Japanese and Czechoslovakian enlargers, the Czechoslovakian exporter did not contest the Commission's view that his enlargers are in general of equal quality to technically equivalent Japanese enlargers; whereas this exporter likewise did not contest the adjustments to normal value decided upon by the Commission for two models where his enlargers appear to be of inferior quality;

Whereas, in the case of Polish enlargers, divergent opinions were presented concerning the existence and extent of quality differences compared with Japanese enlargers; whereas the independent evidence available to the Commission suggests that there is no quality difference; whereas the complainant is prepared to concede that there is some difference in physical characteristics, justifying at the most a price differential of 5 %;

Whereas the exporter and one of the importers consider that a much greater price differential is justified; whereas, in these circumstances, the Commission considers it reasonable to determine the normal value for Polish enlargers as described above, reduced by 10 %;

Whereas, in the case of the USSR, the Commission deemed it appropriate to make a similar 10 % adjustment for differences in physical characteristics despite the fact that no interested party had claimed it;

Whereas actual export prices were established and, where appropriate, verified for each Member State for which data were available;

Whereas due adjustments have, where necessary, been made to bring export price and normal value to a comparable basis; whereas these adjustments concerned mainly payment and delivery terms, transport and insurance costs;

Whereas a comparison of normal value and export price for the year 1981 shows the existence of dumping in respect of imports of most models under investigation, the dumping margin being equal to the amount by which the normal value as established above exceeds the price for export to the Community; whereas the margins expressed as a percentage of the price free-at-Community-frontier vary depending on the model of enlarger, the exporting country and the importing Member State; whereas for Czechoslovakia these vary between nil and 78 %, for Poland between 0·7 and 110·2 %; whereas, for the USSR where only one model is imported and evidence on only one Community market has been made available to the Commission, the dumping margin exceeds by far the highest margin mentioned above;

Whereas, as regards the injury caused to the Community industry, the evidence available to the Commission shows that imports of enlargers from the countries under investigation decreased in absolute figures from 53 426 units in 1979 to 46 691 units in 1980; whereas the Commission's best estimate for the first nine months of 1981 suggests a further fall to about 22 500 units; whereas, however, the share of the Community market held by such imports did not decrease, being 34·3 % in 1979 and 34·8 % in 1980; whereas the Commission's best estimate suggests that this share increased to 37·2 % in 1981;

Whereas, with the exception of those enlargers sold by Community producers at a loss, the resale prices in the Community of the imported enlargers under investigation are lower than those of comparable enlargers produced in the Community by amounts exceeding the margins of dumping determined;

Whereas, as regards the impact on the Community industry, the evidence available to the Commission shows that production has fallen steeply from 125 000 units in 1979 to 110 000 units in 1980 and 47 000 units in the first nine months of 1981, a decrease in average monthly production over the period of 50 %; whereas average utilisation of production capacity has fallen from 77 to 37 % over the same period; whereas this has resulted in a substantial consequential loss of employment in the firms concerned;

Whereas the evidence available to the Commission shows that Community producers competing in this market have been unable to raise their selling prices sufficiently to cover increases in production costs, with the result that their profitability has been severely eroded since 1979;

Whereas the Commission has examined other factors which, individually or in combination, may have adversely affected the Community industry, and in particular the volume and prices of imports from countries other than those under investigation, and the level of consumer demand for enlargers in the Community;

Whereas imports from countries other than those under investigation fell between 1978 and 1981, and the evidence available to the Commission suggests that their market share was not greater than 6 % in 1981 ; whereas it seems reasonable to suggest that at least half of these total imports were of enlargers for professional use, such that the level of imports for amateur use has been very small compared with the level of dumped imports ; whereas the Commission consequently takes the view that imports from countries not under investigation have not had any material adverse effect on the Community industry ;

Whereas, as regards the level of consumer demand for amateur enlargers, the evidence available to the Commission shows that average monthly demand fell by 47 % between 1979 and the first nine months of 1981 ; whereas, however, this decline has affected the Community producers, whose production has fallen by 50 % over the period, more than the dumped imports, which fell by only 44 % ; whereas the Commission considers that the decline in Community production would have been even higher, had the Community producers not chosen to accept losses in order to maintain a foothold in the market for amateur enlargers ;

Whereas the Commission has consequently concluded that the dumped imports have been a cause of material injury to the Community industry ;

Whereas in these conditions, and in order to prevent injury being caused during the investigation, the interests of the Community require immediate intervention in the form of imposition of a provisional anti-dumping duty on imports of photographic enlargers for amateur use originating in Czechoslovakia, Poland and the USSR at a rate which, having regard to the extent of injury caused, should be equal to the margin of dumping provisionally established ; whereas, however, since according to the information available to the Commission, all enlargers imported from the countries concerned are for amateur use, and since it is difficult to define for customs purposes the term 'amateur use', it is appropriate to apply this duty to all enlargers originating in the countries concerned ;

Whereas the exporter in Czechoslovakia (Merkuria, Prague) has voluntarily undertaken to increase his prices to a level suffficient to eliminate the dumping margins provisionally established ;

Whereas the Commission considers this undertaking acceptable and that the proceeding should be terminated in respect of imports originating in Czechoslovakia, thereby excluding them from the application of the abovementioned duty ;

Whereas, in the case of Poland, where the dumping margins vary, it is appropriate to fix the level of the provisional duty at the weighted average dumping margin established on the German market, this being the largest Community market for Polish enlargers and the only market for which adequate data have been made available to the Commission ;

Whereas a time limit should be fixed within which the parties concerned may, following the imposition of the provisional duty, make their views known and apply to be heard orally by the Commission,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on photographic (except cinematographic) enlargers, falling within Common Customs Tariff heading No ex 90.09 (NIMEXE code ex 90.09-30), originating in Poland and the USSR.

2. The duty shall be 29·00 ECU per enlarger originating in Poland, and 33·13 ECU per enlarger originating in the USSR.

3. The provisions in force concerning customs duties shall apply for the application of the duty.

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 3017/79, the parties concerned may make known their views, and apply to be heard orally by the Commission, within one month of the entry into force of this Regulation.

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 3017/79, this duty shall be applicable for four months or until the adoption by the Council of definitive measures, whichever is the earlier.

Article 3

1. The undertaking offered by Merkuria Foreign Trade Corporation, Prague, is hereby accepted.

2. The anti-dumping proceeding concerning photographic enlargers for amateur use originating in Czechoslovakia is hereby terminated.

Article 4

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

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

Done at Brussels, 16 July 1982.

For the Commission

François-Xavier ORTOLI

Vice-President