COMMISSION REGULATION (EEC) No 84/82

of 14 January 1982

imposing a provisional anti-dumping duty on mechanical wrist-watches originating in the USSR

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), and in particular Article 11 thereof,

After consultations within the Advisory Committee set up under that Regulation,

Whereas in June 1980 the Commission received a complaint lodged by the British Clock and Watch Manufacturers Association Ltd on behalf of manufacturers in France and the United Kingdom accounting for the majority of mechanical watches produced in the Community; whereas the complaint contained evidence of the existence of dumping in respect of like products originating in the USSR, and of material injury resulting therefrom;

Whereas, since the said evidence was sufficient to justify initiating a proceeding, the Commission accordingly announced, by a notice published in the *Official Journal of the European Communites* (2), the initiation of a proceeding concerning imports of mechanical watches and mechanical watch movements originating in the USSR, and commenced an investigation of the matter at Community level;

Whereas the Commission officially so advised the exporter and importers known to be concerned as well as the exporting country;

Whereas the Commission has given the parties directly concerned the opportunity to make known their views in writing and to be heard orally, and to meet so that opposing views might be presented and rebuttal arguments put forward;

Whereas the importing parties took this opportunity to submit a detailed written submission contesting the case advanced in the complaint; whereas, in addition, at the request of the importing parties and of one of the complainants, the Commission organized a confrontation meeting so that each side could present its opposing views and rebuttal arguments;

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 of the product in question to the Community, and the extent of injury caused to the Community industry, the Commission carried out inspections at the premises of the two principal importers concerned, namely Elco Clocks and Watches Ltd (a wholely-owned subsidiary of Time Products Ltd, London), and Slava SA, Besançon, and of the principal Community manufacturer of mechanical watches, namely Timex Corporation, Dundee; whereas the Commission also contacted most of the other Community producers, situated in France, requesting detailed written information;

Whereas, in determining the normal value for the product in question, the Commission had to take into account the fact that the USSR does not operate a market economy; whereas, in such circumstances, the normal value for the product in question must ordinarily be determined on the basis of the prices charged for, or the constructed value of, the like product of a market-economy third country;

Whereas, in this connection, the complaint cites the prices of Swiss and Hong Kong watches on the Community market; whereas it is not possible, by virtue of Swiss Law, for officials of the Commission to carry out inspections at the premises of Swiss watch producers; whereas inspections were consequently carried out in November 1980 at the premises of four firms in Hong Kong, among whom were Remex International Time Ltd (a sister company of the UK importer of USSR watches) and the Swiss Chinese Watch Trading Centre;

Whereas one of the complainants, Timex Corporation, subsequently expressed its disagreement with the choice of Hong Kong as the basis for normal value, and requested an opportunity to file a written submission on the subject; whereas this submission was received only on 21 May 1981, and was followed by a further written submission on 14 July 1981; whereas the Commission therefore delayed its preliminary determination in order to be able to take into account the arguments advanced, and to allow the importing

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No C 181, 19. 7. 1980, p. 3.

parties an opportunity to comment on the arguments advanced by Timex Corporation; whereas the Commission was consequently not able to conclude the proceeding within one year of its initiation, as should normally be the case;

Whereas, in its written submissions, Timex Corporation argued that, taking into account the level of economic development and the structure of watch production of each country, Hong Kong was not an 'appropriate and not unreasonable' basis for determining normal value for the USSR, and that, in the absence of such a basis in any third country other than Switzerland — where the Commission claimed it could not carry out the necessary inspections — normal value should be determined on the basis of the prices in the Community, namely in France;

Whereas the Commission, after having heard the arguments on both sides, maintains its view that, for the purposes of a preliminary determination of dumping, Hong Kong is an 'appropriate and not unreasonable' basis for determining normal value;

Whereas, in arriving at this conclusion, the Commission has based itself on the following main factors:

— all parties agree that, if Switzerland is excluded, the only possible third country basis would be Hong Kong,

— it has not been clearly demonstrated that buying parts or sub-assemblies from an outside firm (as is the case in Hong Kong) rather than producing them internally (as appears to be the case in the USSR) materially influences the costs of production or the final selling price,

— the Swiss and French industries advanced by the complainant as a more appropriate basis for normal value operate in any event (as is the case with Hong Kong) on the basis of buying in parts and sub-assemblies,

— the complainant's argument that all parts and sub-assemblies bought in should be produced in the country chosen as the basis for normal value would, if applied as a general rule, unduly restrict the Commission's freedom to choose an appropriate basis for nomal value, since few, if any, industries in market-economy countries do not rely to some extent on imports,

— none of the economic data available, even if all necessary caution in interpreting them is exercised, show conclusively that Hong Kong is an inappropriate or unreasonable basis for establishing normal value for USSR watches,

— if Hong Kong cannot be ruled out, then it is not legally possible to use Community prices as the basis for normal value;

Whereas, since mechanical watches are not a homogeneous product, it was necessary to determine normal value in a manner which would permit an appropriate value to be determined for each of the main types of watch or movement exported to the Community from the USSR; whereas the Commission consequently determined normal value by calculating, for each main type, the constructed value of the like product manufactured in Hong Kong;

Whereas, as concerns the export price for watches, the Commission took the actual prices charged by the USSR exporter for sale to the Community; whereas, as concerns movements, the importer in France was unwilling to supply details of the prices charged by the exporter; whereas the Commission consequently used the best evidence otherwise available, namely the values declared to the French authorities on import licences;

Whereas the importer of USSR watches in the UK has claimed that the gold-plated watches imported by him, which were previously plated to a thickness of 10 microns, are from this year only plated to a thickness of five microns; whereas, since the Commission has not been able so far to verify this, it has assumed, in making its preliminary determination, that watches plated to both thicknesses are currently being imported;

Whereas for watches, a comparison for the first six months of 1981 between the normal value and the price for export to the United Kingdom, which accounted in 1980 for 94 % of Community imports of USSR watches, shows dumping margins varying in amount from zero to 43 % of the export price; whereas, on the assumption that those watches which are gold-plated carry a thickness of five microns, the weighted average dumping margin for all watches is equal to 9·9 % of the export price; whereas, on the assumption that gold-plated watches carry 10 microns, the weighted average dumping margin for gold-plated watches alone is equal to 23·6 % of the export price;

Whereas for movements, the best evidence available to the Commission shows that in 1980 in France there was a dumping margin equal to at least 53·5 % of the export price;

Whereas, as regards the injury caused by the dumped imports to the Community industry, the evidence available to the Commission during the investigation shows that imports of mechanical watches and mechanical watch movements from the USSR rose from 1·19 million pieces in 1978 to 2·38 million pieces in 1980;

whereas in 1980 two Member States, France and the United Kingdom, accounted for 87 % of these imports, the UK alone accounting for 76 % ;

Whereas in the United Kingdom imports, consisting solely of complete watches, rose from 0·81 million pieces in 1978 to 1·82 million pieces in 1980 ; whereas the Commission estimates that these figures represent, respectively, 10·4 % and 22·1 % of total UK consumption of mechanical watches in the year in question ; whereas, in order to sell this sharply increased quantity of imported watches against a stagnant total demand for mechanical watches in the UK, the importer has made substantial reductions in his net prices, and is now selling at prices below those charged for comparable watches by the sole UK producer, Timex Corporation ;

Whereas in France, imports of mechanical watches and watch movements from the USSR are, in accordance with Community legislation, restricted by a quota, with the result that imports have been much lower than in the UK ; whereas, if imports of pocket watches, which are not covered by the proceeding, and re-exports are subtracted, it is estimated that imports of mechanical wrist-watches and mechanical watch movements destined for consumption in France stood at 214 thousand pieces in 1978, at 315 thousand pieces in 1979, and at 184 thousand pieces in 1980, accounting in each year for between 1·7 % and 1·9 % of estimated French consumption ;

Whereas, in determining the effect of the dumped imports on the Community industry, the Commission has concentrated on the situation of Timex Corporation, since Timex Corporation accounts on its own for a major proportion of the total Community production of mechanical watches, and exports of the product under investigation to the Community are concentrated mainly in the UK market, where other Community producers sell only a very small part of their production and are consequently less directly affected by the penetration of the dumped product than Timex, for whom the UK is the main market in the Community ;

Whereas the evidence available to the Commission shows that production of mechanical watches in the UK by Timex Corporation fell by 13 % between 1978 and 1980, and is expected to fall by around a further 10 % in 1981 ; whereas this latter fall in particular reflects a severe decline in Timex's sales of mechanical watches on the UK market, which is virtually the sole market for its mechanical watches in the Community ;

Whereas, according to the evidence available to the Commission, Timex's share of the UK market for mechanical watches declined from 31 % in 1978 to 25 % in 1980, while still remaining substantially higher than the 12 % share held by sales of USSR watches ; whereas in 1981 the evidence shows that Timex has been unable to maintain its market position in the face of the price-cutting being practised by the importer, Time Products through its distributing subsidiary Global Watches Ltd, in order to sell the substantially increased quantities it had imported ;

Whereas the profitability of Timex's sales of mechanical watches in the UK has declined sharply and progressively since 1978, as Timex has been unable to pass on fully the increases in its costs of production ; whereas that situation is now seriously aggravated by the pressure on Timex's prices being exercised by Time Products through its sales of USSR watches ;

Whereas, as regards other Community producers, most of these are situated in France ; whereas, moreover, less than 1 % of French production of mechanical watches is sold in the UK, which is the only region of the Community where there is a sizeable penetration of the market by the dumped product ;

Whereas the Commission has considered the injury caused by other factors which, individually or in combination, are also affecting Timex Corporation ; whereas in this context the Commission has examined in particular the level of demand for mechanical watches, and the impact on the market of quartz and other electronic watches ;.

Whereas the evidence available to the Commission shows that demand for mechanical watches remained relatively stable in the UK in the years 1978 to 1980 at between 7·2 and 7·8 million pieces ;

Whereas the Commission has concluded from the evidence in its possession that the availability of quartz digital watches at competitive prices has probably had a depressive effect on the market for mechanical watches ; whereas, however, the Commission has concluded that this factor accounts for only a part of the difficulties being suffered by Timex Corporation which in 1981 have been, at least to a substantial extent, the result of the aggressive selling by Time Products of large stocks of dumped USSR watches ;

Whereas the Commission has thus determined that the injury being caused by dumped imports of mechanical watches from the USSR, taken in isolation from that caused by other factors, has to be considered as material ;

Whereas, as regards mechanical watch movements, the Commission has determined that, while there are substantial margins of dumping, the low level of

market penetration and the effect of the quantitative restrictions in force in France are such that material injury is not being caused and there is no threat that it will be caused;

Whereas in these circumstances, and in order to prevent injury being caused during the proceeding, the interests of the Community call for immediate intervention consisting in the imposition of a provisional anti-dumping duty on imports of mechanical wrist-watches originating in the USSR at a rate which, having regard to the extent of injury caused, should be equal to the dumping margin provisionally established;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on mechanical wrist-watches falling within heading ex 91.01 of the Common Customs Tariff, corresponding to NIMEXE codes ex 91.01-37 and 57, originating in the USSR.

2. The amount of the provisional anti-dumping duty shall be as follows:

(a) for watches without gold-plating or with gold-plating of a thickness of up to and including five microns: 9·9 % of the value free-at-Community-frontier, duty unpaid;

(b) for watches with a gold-plating of a thickness exceeding five microns: 23·6 % of the value free-at-Community-frontier, duty unpaid.

3. Duty shall not be levied at the lower rate unless the importer furnishes adequate documentary or other proof that the consignment in question falls within the category defined in paragraph 2 (a).

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

5. The provisions in force with regard to customs duties shall apply to the said 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.

Article 3

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

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

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

Done at Brussels, 14 January 1982.

For the Commission

Étienne DAVIGNON

Vice-President