COMMISSION REGULATION (EEC) No 1500/83

of 9 June 1983

imposing a provisional anti-dumping duty on imports of outboard motors originating in Japan

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 Article 11 thereof,

After consultations within the Advisory Committee as provided for by the above Regulation,

Whereas :

A. Procedure

(1) In July 1982 the Commission received a complaint lodged by Outboard Marine Belgium NV, the British Seagull Company, Industria Meccanica Selva SpA and König Motorenbau KG who together represent approximately 75 % of Community production of outboard motors. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* (3), the initiation of an anti-dumping proceeding concerning imports into the Community of outboard motors falling within subheading ex 84.06 B of the Common Customs Tariff (NIMEXE codes 84.06-10 and 12) and originating in Japan and commenced an investigation.

(2) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

All the known exporters and most importers made their views known in writing and some of them have requested and have been granted hearings.

(3) For the purpose of a preliminary determination the Commission requested and received detailed written submissions from complainant Community producers, exporters and importers.

Moreover, the Commission carried out investigations at the premises of the major EEC producer, Outboard Marine Belgium NV, and at the premises of the following Japanese exporters : Yamaha Motor Company Ltd, Suzuki Motor Company Ltd, Tohatsu Corporation and Honda Motor Company Ltd.

(4) Yamaha Motor Company Ltd requested an opportunity to meet the complainants for the purpose of presenting their opposing views ; the complainants stated, however, that they were not at this provisional stage prepared to attend such a meeting.

(5) Several Japanese exporters have challenged that Outboard Marine Belgium NV can qualify as an established Community industry. The Commission is, however, of the opinion that the outboard motors manufactured by that company should, according to Council Regulation (EEC) No 802/68 (4), be considered as originating in the Community and that therefore that company is entitled to lodge an anti-dumping complaint.

(6) The investigation of dumping covered the period from August 1981 to July 1982 inclusive.

B. Like product

(7) Japanese exporters have expressed doubts as to the production by the complainants of the whole range of outboard motors imported from Japan, in particular those above 85 hp. The complainants have, however, argued that one racing model of 120 hp is produced in the Community and that moreover the low prices of the Japanese motors above 85 hp have prevented any European production.

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No C 215, 19. 8. 1982, p. 3.
(4) OJ No L 148, 26. 6. 1968, p. 1.

After having given due consideration to those conflicting views, the Commission has provisionally determined that, since there has been no European production of outboard motors above 85 hp other than for racing, and since there is no sufficiently convincing factual indication that the establishment in the EEC of such production is being envisaged, these motors should be excluded from the scope of the proceedings.

C. Normal value

(8) With regard to imports from Yamaha Motor Company Ltd and Honda Motor Company Ltd, normal value was provisionally determined on the basis of the actual prices of all domestic sales in Japan.

(9) With regard to Suzuki Motor Company Ltd the normal value was determined on the basis of the actual prices of all domestic sales to unrelated customers in Japan. Suzuki has argued that sales to related customers should also be included since the prices of those sales were not influenced by the relationship but were lower because of the larger quantities sold to those companies. The Commission noted that those prices were lower but could not rule out that these price levels were influenced by the relationship. Therefore the Commission was not satisfied that sales by the Suzuki Motor Company Ltd to related companies were in the ordinary course of trade and provisionally determined that they had consequently to be excluded from the determination of normal value.

(10) With regard to the imports from Tohatsu Corporation the preliminary investigation to determine the existence of dumping has shown that the prices of the like products marketed by that exporter on its domestic market had, during the period of investigation and in respect of substantial quantities, been lower than all costs, both fixed and variable, ordinarily incurred in its production. Normal value was therefore determined by adjusting the sub-production cost prices referred to above in order to eliminate the losses and allow a reasonable profit. For the purpose of the preliminary determination and without prejudice to a different assessment at a later stage of the proceeding, the Commission held that 5 % could be considered as a reasonable profit margin in the light of the performance of other major Japanese producers of outboard motors during the investigation period.

D. Export prices

(11) Export prices were determined on the basis of the prices actually paid or payable for the products sold for export to the Community. However, where exports were made to associated companies or subsidiaries in the Community export prices were constructed on the basis of the prices at which the imported product as first resold to an independent buyer, suitably adjusted to take account of all costs incurred between import and resale, including customs duty, and of a profit margin of 5 % considered reasonable in the light of the profit margins of independent importers of the products concerned.

E. Comparison

(12) Several Japanese exporters argued that since the export price and the normal value were not on a comparable basis appropriate allowances should be made in accordance with Article 2 (10) of Regulation (EEC) No 3017/79 which provides for differences affecting price comparability.

(13) In the case of Yamaha Motor Company Ltd the Commission took account of differences in physical characteristics affecting price comparability since these differences could be satisfactorily demonstrated.

(14) With regard to differences in quantities, requests made by all the exporters for allowances concerning quantity discounts or rebates actually granted on the Japanese market have been accepted by the Commission. A further request was made by Suzuki Motor Company Ltd for an adjustment to take account of the fact that quantities exported to the EEC had been much larger than those sold on the Japanese market. Such a request could only have been accepted if a price differential between the normal value and the export price was due to savings in the cost of producing different quantities. Since evidence of such savings was not given by Suzuki Motor Company Ltd, all requests made in this respect have been rejected by the Commission.

(15) With regard to differences in terms and conditions of sale, requests for allowances made by all the exporters were granted in so far as the latter were able to demonstrate a direct relationship to

the sales under consideration. The differences in costs accepted include warranty, salesmen's salaries, travelling and telecommunications expenses, packing and freight. All other differences in costs, including advertising and promotion, overheads and general expenses were provisionally not allowed. Similar adjustments were also made to exports, in particular with respect to packing, shipping, warranty and directly related overheads.

(16) Allowances were also requested for differences in level of trade. This claim was rejected by the Commission on the grounds that all comparisons between the export prices and the normal value were made at the ex-factory level in accordance with Article 2 (9) of Regulation (EEC) No 3017/79. Furthermore, the Commission deems that the specific request made by Suzuki Motor Company Ltd for an allowance under this heading has already been considered in paragraph 15 dealing with allowances for differences in terms and conditions of sale.

F. Margins

(17) The above preliminary examination of the facts shows the existence of dumping in respect of all exporters involved, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community. These margins vary according to the exporter, the importing Member State and the type of outboard motor concerned, the weighted average margin for each of the exporters investigated being as follows :

— Yamaha Motor Company Ltd	53 %
— Suzuki Motor Company Ltd	22 %
— Tohatsu Corporation	43 %
— Honda Motor Company Ltd	2 %

G. Injury

(18) With regard to the injury caused by the dumped imports the evidence available to the Commission shows that imports into the Community from Japan of all outboard motors increased from 29 453 units in 1975 to 59 512 units in 1981 and 67 915 in 1982 with a consequent increase in the market share held by Japanese imports in the Community from 19,8 % in 1975 to 32,1 % in 1981 and 39,3 % in 1982.

(19) The Community industry in respect of which the impact of the dumped imports must be assessed is the European outboard motors manufacturing industry.

(20) The main features of the consequent impact of the dumped imports on the Community industry have been price depression, financial losses and a reduction in employment.

(21) In this context it should be noted that in 1978, in order to meet Japanese competition and to regain its lost market share, Outboard Marine Belgium NV, the largest Community producer, reduced its prices substantially. By the end of 1979 Outboard Margine Belgium NV had regained the market share lost since 1975 but at the expense of moving from profitability to suffering financial losses. However, subsequently, the Japanese pricing continued to be particulary low and the resale prices of imports were lower than those required to cover the costs of Community producers and provide a reasonable profit. Therefore since 1979 Community producers have again suffered a slight decrease in market share and their losses have sharply increased.

(22) The Commission has considered whether injury has been caused by other factors such as the volume and prices of other imports or the stagnation of demand. Imports into the EEC from all other origins than Japan have gone down from 30 000 to 5 500 units from 1975 to 1982. Consumption in the Community has slightly declined during the same period. It has, however, been established that the reduction in imports from other sources has benefited the dumped imports more than Community production and the decline in consumption has affected Community products more than the dumped imports.

(23) Therefore the sharp increase in the dumped imports and the prices at which they are offered for resale in the Community has led the Commission to determine that the effects of the dumped imports of outboard motors up to and including 85 hp originating in Japan, have to be considered as causing material injury to the Community industry concerned.

H. Community interest

(24) After having considered the interests of the Community and both the dumping and the injury provisionally established the Commission has come to the conclusion that action should

be taken. In order to prevent further injury being caused during the remainder of the proceeding, this action should take the form of a provisional anti dumping duty.

I. Rate of duty

(25) Having regard to the extent of injury caused, the rate of such duty should, in the case of imports from Honda Motor Company Ltd, correspond to the margin of dumping provisionally determined.

(26) In the case of all other imports of outboard motors from Japan the duty should be less than these dumping margins but adequate to remove the injury caused. Having compared the Community producers' weighted average prices and costs, taking account of their profit and loss situation, with the individual importers' costs and special marketing conditions, the Commission determined the amount of duty necessary to eliminate the injury to be 22 %.

(27) A period should be fixed within which the parties concerned may make their views known and request an oral hearing,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of outboard motors up to and including 85 hp falling within subheading ex 84.06 B of the Common Customs Tariff (NIMEXE codes 84.06-10 and ex 84.06-12) and originating in Japan.

2. The amount of the duty shall be equal to 22 % of the cif price before duty, except for imports of products manufactured and exported by Honda Motor Company Ltd, in respect of which the rate of duty shall be 2 %.

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.

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, it shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 9 June 1983.

For the Commission

Richard BURKE

Member of the Commission