COMMISSION REGULATION (EEC) No 2812/85

of 7 October 1985

imposing a provisional anti-dumping duty on imports of electronic typewriters manufactured by Nakajima All Co. Ltd 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 2176/84 of 23 July 1984 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 as provided for by the above Regulation,

Whereas :

A. Procedure

1. In March 1984 the Commission received a complaint lodged by the Committee of European Typewriter Manufacturers (CETMA) on behalf of producers representing substantially all Community production of electronic typewriters. 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* (2), the initiation of an anti-dumping proceeding concerning imports into the Community of all kinds of electronic typewriters originating in Japan, and commenced an investigation.

2. By Commission Regulation (EEC) No 3643/84 (3) the anti-dumping proceeding concerning imports into the Community of electronic typewriters exported by Nakajima All Co. Ltd was termintated following the provisional determination of a *de minimis* dumping margin in relation to that exporter.

   This Decision was taken in view of the preliminary finding which with regard to the profitability of sales of electronic typewriters on the domestic Japanese market. However, at a later stage of the investigation, it was established that the provisional conclusion with regard to profitability was incorrect.

3. In view of these findings it was consequently decided to review the Commission Decision referred to above and to evaluate the consequences of these later findings or the case of Nakajima All Co. Ltd. The Commission accordingly announced this review by a notice published in the *Official Journal of the European Communities* (4), and recommenced an investigation.

4. The Commission officially so advised the exporter 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.

   Nakajima All Co. Ltd and one importer made their views known in writing and have requested and have been granted hearings.

5. In addition to the information already received during the initial investigation the Commission sought and verified all additional information it deemed to be necessary for the purposes of a preliminary determination and carried out an investigation at the premises of the following :

   EEC producer :

   Triumph-Adler Aktiengesellschaft für Büro- und Informationstechnik, Nürnberg, Germany.

6. The investigation of dumping covered, as before, the period from 1 April 1983 to 31 March 1984.

B. Normal Value

7. Since Nakajima's sales volume on the domestic market was not sufficiently large to allow the determination of normal value on that basis, normal values for the typewriter models concerned were established on the basis of the constructed value.

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No C 83, 24. 3. 1984, p. 4.
(3) OJ No L 335, 22. 12. 1984, p. 43.
(4) OJ No C 149, 19. 6. 1985, p. 3.

8. Nakajima claimed that a profit margin lower than that referred to in recital 16 of Council Regulation (EEC) No 1698/85 (1) imposing a definitive anti-dumping duty in the proceeding referred to in recital 2 above should be used because Nakajima's structure on the domestic Japanese market was different from other Japanese producers and exporters.

This claim, however, has remained largely unsubstantiated and cannot therefore be accepted.

9. Nakajima claimed furthermore that new production cost data referring to a period subsequent to the period under investigation be used. However, this claim had to be rejected because it is not normally possible to take into account circumstances occurring after the end of the period of investigation for the purposes of the dumping calculation.

C. Export price

10. Export prices have been provisionally determined on the basis of the prices actually paid by the importers in the Community.

D. Dumping margins

11. A preliminary comparison between normal value and export price, both at ex-factory level, shows the existence of dumping in respect of exports to the Community of electronic typewriters manufactured by Nakajima, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community. The weighted average dumping margin for all exports to the Community was found to be 28,8 %.

E. Injury

12. As already indicated in recitals 30 to 35 of Regulation (EEC) No 3643/84 and recitals 30 to 38 of Regulation (EEC) No 1698/85, it had been globally established that dumped imports of electronic typewriters originating in Japan had caused material injury to the Community industry.

13. Nakajima claimed that it could not have injured the Community industry because a substantial part of its exports to the Community were in fact made to one of the complainants and to a firm in a non-Member State other than Japan in which another complainant had an interest.

The investigation revealed, however, that the third Community complainant producer carried out negotiations with one of the two other Community producers with a view to selling its own typewriters to the latter which then market the machines under its own brand name. These negotiations failed because, during the period under investigation, Nakajima offered typewriters for sale to the Community producer in question at prices at which the third Community producer could not compete.

It is therefore concluded that the Community industry, excluding the two complainants referred to above, has been injured by dumped Nakajima imports.

14. The Commission considered whether, as far as Nakajima is concerned, a level of duty below the dumping margin as established above would be sufficient to eliminate the injury caused to the Community industry. For this purpose the Commission proceeded as described in recital 36 of Regulation (EEC) No 1698/85, the comparison being made between the various Nakajima models and that model of Community production against which the former could be validly compared. This comparison revealed that the level of injury caused by Nakajima's imports was in excess of the dumping margin found. No other injury element led to the conclusion that a rate of 28 % was inappropriate.

F. Community interest

15. It had already been concluded in recital 42 of Regulation (EEC) No 1698/85 that protection of the Community's interest called for action to be taken against imports of dumped electronic typewriters originating in Japan. There is no reason to believe that a different conclusion is warranted in Nakajima's case.

G. Rate of duty

16. Having regard to the extent of the injury caused, the rate of duty should correspond to the margin of dumping provisionally established.

17. A period should be fixed within which the parties concerned may make their views known and request a hearing,

(1) OJ No L 163, 22. 6. 1985, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of electronic typewriters falling within subheadings ex 84.51 A or ex 84.52 B of the Common Customs Tariff, corresponding to NIMEXE codes 84.51 ex 12, ex 14, ex 19, ex 20 or 84.52 ex 95, manufactured by Nakajima All Co. Ltd of Japan.

2. The rate of duty is fixed at 28 % of the price net, free-at-Community-frontier, before duty.

3. The provisions in force concerning duties shall apply.

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 2176/84 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 following its publication in the *Official Journal of the European Communities.*

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2176/84, Article 1 of this Regulation 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, 7 October 1985.

For the Commission

Willy DE CLERCQ

Member of the Commission