COMMISSION REGULATION (EEC) No 595/85

of 7 March 1985

imposing a provisional anti-dumping duty on imports of certain hydraulic excavators 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 under the above Regulations,

Whereas :

A. Procedure

(1) In May 1984, the Commission received a complaint lodged by the Federation of Manufacturers of Constructing Equipment and Cranes on behalf of Community producers whose collective output constitutes the majority of Community production of the products in question. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered suffcient 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 self-propelled hydraulic excavators, track laying or wheeled with a total operating weight above six tonnes and not exceeding 35 tonnes having a 360° slew capability and equipped with a single bucket, originating in Japan and falling within Common Customs Tariff subheading ex 84.23 A I b) and corresponding to NIMEXE code ex 84.23-11, 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 complainants, and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(3) The majority of the known producers, all exporters and importers and certain dealers made their views known in writing and certain producers, all exporters and a few importers concerned requested and were granted a hearing.

(4) No submissions were made by Community purchasers and users of hydraulic excavators.

(5) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

EEC producers :

— Benati SpA, Imola (Italy),
— Fiat Allis Europe SpA, Torino (Italy),
— J. C. Bamford Excavators Ltd, Rochester (United Kingdom),
— Liebher Gmbh, Kirchdorf/Iller (West Germany),
— Poclain SA, Le Plessis-Belleville (France),
— Orenstein und Koppel AG, Dortmund (West Germany),
— Ruston Bucyrus Ltd, Lincoln (United Kingdom),
— H. Weyhausen KG, Delmenhorst (West Germany),
— Yumbo SA, Genas (France).

Non-EEC producers :

— Hitachi Construction Machinery Co. Ltd, Tokyo (Japan),
— Japan Steel Works Ltd, Tokyo (Japan),
— Mitsubishi Heavy Industries, Akashi (Japan),
— Kobelco-Kobe Steel Ltd, Tokyo (Japan),
— Komatsu Ltd, Tokyo (Japan).

Exporters to EEC :

— C. Itoh & Co. Ltd, Tokyo (Japan),
— Tokyo Menka Kaisha, Osaka (Japan).

EEC importers :

— Komatsu Europe NV, Vilvoorde (Belgium),
— Équipco, Bagnolet (France),
— Hitachi BV, Oosterhout (Netherlands),
— C. H. Beazer, Bridgewater, Somerset (United Kingdom),
— Kobemac Ltd, Harewood Forest Works (United Kingdom),
— Tridiam, Woking, Surrey (United Kingdom).

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No C 201, 31. 7. 1984, p. 3.

EEC dealers

— ECI, Dublin (Ireland),

— P.O. Donnell & Co., Dublin (Ireland).

(6) The Commission requested and received detailed written submissions from the majority of complainant Community producers, all exorters and importers, and certain dealers, and verified the information therein to the extent considered necessary.

(7) The investigation of dumping covered the period 1 January 1983 to 31 March 1984.

B. Normal value

(8) Normal value was provisionally determined on the basis of the domestic prices paid or payable in the ordinary course of trade of those prolucers who exported to the Community and who provided sufficient evidence and were considered to be representative of the domestic market concerned.

(9) The preliminary investigation to determine the existence of dumping showed that the prices of certain of the like products by the exporters on their domestic market had been lower than cost of production over an extended period of time. In such cases, the normal value was, therefore, determined either by adjusting the subproduction cost prices (for those companies that sold certain models at prices below cost of production) referred to above in order to eliminate the losses and allow a reasonable profit, based on the firms' performance concerning these models during a representative profitable period, or on the basis of constructed value. The constructed value was determined by adding cost of production and a reasonable margin of profit. The costs of production were computed on the basis of all costs, in the oridinary course of trade, both fixed and variable, in the country of origin, of materials and manufacture, plus a reasonable amount for selling, administrative and other general expenses. A profit margin of 5,2 % was added to these costs and this was considered to be reasonable in the light of the industry's performance during a representative profitable period.

The exporter in question argued that it was a subsidiary of a steel company and claimed, therefore, that a much lower profit margin prevailing in the steel industry should be used. However, this claim was rejected on the ground that for the purposes of establishing normal value only the profit margins of the industry producing the like product are relevant.

C. Export price

(10) With regard to exports by Japanese firms to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the products sold for export to the Community.

(11) In those cases where exports were made to subsidiary companies in the Community, export prices were constructed on the basis of the prices at which the imported product was first resold to an independent buyer, suitably adjusted to take account of all costs incurred between importation and resale, including all duties, and of a reasonable profit margin.

D. Comparison

(12) In comparing normal value with export prices the Commission took account, where appropriate, of differences in conditions and terms of sale affecting price comparability, and allowances were made for differences in physical characteristics, payment terms, selling expenses, commissions and transport where claims in these areas could be satisfactorily demonstrated. All comparisons were made at ex-works level.

E. Margins

(13) Normal value on a monthly weighted average basis was generally compared with export prices during the corresponding months on a transaction-by-transaction basis. The above preliminary examination of the facts shows the existence of dumping in respect of imports of certain hydraulic excavators originating in Japan, 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 concerned, the weighted average margin for each of the exporters investigated being as follows :

— Hitachi Construction Machinery Co. Ltd	12,4 %
— Japan Steel Works Ltd	2,9 %
— Kobelco-Kobe Steel Ltd	31,9 %
— Komatsu Ltd	27,6 %
— Mitsubishi Heavy Industries	21,6 %.

(14) For those exporters who neither replied to the Commission's questionnaire nor made themselves known otherwise in the course of the preliminary investigation, dumping was determined on the basis of the facts available. In this connection the Commission considered that the results of its investigation provided the most appropriate basis for determination of the margin of dumping and that it would constitute a bonus for non-cooperation and would create an opportunity for circumvention of the duty to hold that the dumping margin for these exporters was any lower than the highest dumping margin of 31,9 % determined with regard to an exporter who had cooperated in the investigation. For these reasons it is considered appropriate to use this latter dumping margin for this group of exporters.

F. Injury

(15) With regard to the injury caused by the dumped imports the evidence shows that imports from Japan of certain hydraulic excavators increased from 276 units in 1980 to 1 127 units in 1983 and 498 units in the first quarter of 1984 with a consequent increase in market share held by the exporting country from 2,4 % in 1980 to 10,4 % in 1983 and to 19,2 % in the first quarter of 1984. On the other hand, the market share of hydraulic excavators from non-member countries other than Japan have decreased from 1,3 % in 1980 to 0,4 % in 1983 and 0,7 % in the first quarter of 1984.

(16) The sale prices of these imports to the first independent buyer were lower than those required to cover the costs of Community producers and provide a reasonable profit during the period of investigation, the differences being between 15 and 52 % depending on the exporter and the model concerned.

(17) The impact of the low-priced imports on the Community industry has contributed significantly to the decrease n production from 17 800 units in 1980 to 15 158 units in 1983 and to 3 076 in the first quarter of 1984 and to the decrease of sales from 11 109 units to 9 636 and to 2 063 units in the same periods. The market share held by Community producers consequently fell from 96,3 % in 1980 to 89,2 % in 1983 and to 80,1 % in the first quarter of 1984.

(18) The evidence available to the Commission shows that there is serious price suppression in the Community and that prices obtained by Community producers are not sufficient to cover the full cost of production. In many cases, Community producers had to decrease their prices substantially in order to meet the prices of the Japanese exports thus avoiding a further reduction of production which would have resulted in further increases of their unit costs. Community producers had to align on a generally very low and insufficient price level; consequently all complainant Community producers have incurred substantial losses since 1982.

(19) Plant closures, a decrease of production and a decrease of capacity utilization have severely affected employment in the industry concerned, which has decreased by as much as 50 % between 1980 and 1983.

(20) The consecutive and continuous entry into the Community market by the five Japanese exporters selling the products in question at dumped prices, in order to gain market share, has been a major source of the problems faced by the Community industry in question during the past few years and this has led certain Community producers to bankruptcy, forced others to cease production and put the rest in a critical financial position.

(21) In establishing the impact of the dumped imports on the Community industry the Commission has considered the effect of all dumped imports from all companies concerned. Certain exporters argued that the impact of their individual exports should be looked at in isolation and considered not to have caused material injury in view of the low level of their market share in the Community and the time they entered the Community market. In analyzing whether cumulation was appropriate in each case, the Commission considered whether the dumped imports in question contributed to the material injury sustained by the Community industry. In reaching its conclusion, the Commission considered the comparability of the imported products in terms of physical characteristics, the increase in volume of imports from a previous comparable period and the low level of prices attributable to the products of all supplying companies and the extent to which each of the imported products competed in the Community with the like product of the Community industry. On the basis of such analysis the Commission took the view that the dumped imports from the companies concerned

could be considered as contributing to the material injury suffered and that these imports have been made under such conditions that, should the Commission treat any company in isolation, it would be acting in a discriminatory manner against the rest. Accordingly, the Commission concluded that for the purposes of establishing the level of injury sustained by the Community industry, regard should be paid to the effect of the dumped imports cumulated from all exporting companies concerned.

(22) The Commission also considered whether injury has been caused by other factors such as imports from non-member countries or development in demand. It has been established, however, that market share of imports of the products in question from countries other than Japan fell from 1,3 % in 1980 to 0,4 % in 1983 and 0,7 % in first quarter of 1984. As to development in demand it was established that consumption of hydraulic excavators in the Community decreased from 11 537 units in 1980 to 10 804 units in 1983 and 2 591 units in the first quarter of 1984. But while the Community producers' market share decreased substantially during that period, Japanese exports increased their sales and their market share significantly. The exporters concerned argued that injury to the Community industry had been caused by other factors such as poor productivity and lack of modernization of the plants of the Community producers. This argument was rejected on the grounds that only the data relating to major Community producers were taken into account for the comparison as described under paragraph 16. The plants of these Community producers are comparable to those in the exporting country. In any event, the investigation has shown that a significant part of the price-undercutting by the Japanese exporters on the Community market results from dumping and not from normal competitive advantage.

In these circumstances, the substantial increase in dumped imports and the prices at which they are sold in the Community led the Commission to determine that the effect of the dumped imports of certain hydraulic excavators originating in Japan, taken in isolation, have to be considered as constituting material injury to the Community industry concerned.

G. Community interest

(23) In view of the particular difficulties facing the Community industry and the absence of any reaction by or on behalf of Community consumers of the products concerned, the Commission has come to the conclusion that it is in the Community's interest that action be taken.

H. Disclosure

(24) The exporters concerned were informed of the main findings of the preliminary investigation and commented on them. The evidence and the calculations were re-examined in the light of these comments ; adjustments were made where necessary to take account of the exporters' arguments wherever these arguments were justified.

I. Undertakings

(25) Undertakings were subsequently offered by all the exporters in question concerning their exports of certain hydraulic excavators to the Community.

(26) In view of the urgency that action should be taken and of the fact that more time would be necessary to assess the acceptability of the undertakings, the Commission, after consultation with the Member States, has decided that, for the time being this action should take the form of a provisional anti-dumping duty.

(27) Certain other Japanese producers of hydraulic excavators who have never exported to the Community expressed an interest in offering a price undertaking regarding future exports. In view of the fact that the Commission's findings could only be considered as preliminary at this stage, and that more time would be necessary to assess price undertakings from potential exporters, it has been decided not to accept them even if they were offered.

In any event, no investigation of these producers was made since. In conformity with the Commission's general practice, the scope of the investigation was limited to those producers and exporters who actually exported to the Community during the investigation period and prior investigation would normally be required before the acceptability of the price undertaking could be assessed. Moreover, for the reasons set out in Council Regulation (EEC) No 3337/84 [1] it is not the Commission's general practice to accept price undertakings from potential exporters even if they are offered.

[1] OJ No L 311, 29. 11. 1984, p. 26.

If these potential exporters begin to export to the Community, it may be appropriate to apply the provisions of Articles 14 and 16 of Regulation (EEC) No 2176/84 relating respectively to reviews and refunds of anti-dumping duties.

J. Rate of duty

(28) Having regard to the extend of injury caused, the rates of anti-dumping duty should correspond to the margin of dumping provisionally established.

(29) 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 certain hydraulic excavators with a total operating weight above six tonnes and not exceeding 35 tonnes, track laying or wheeled having a 360° slew capability and equipped with a single bucket, originating in Japan and falling within Common Customs Tariff subheading ex 84.23 A I b), corresponding to NIMEXE code ex 84.23-11.

2. The rate of the duty shall be as set out below expressed as a percentage of the price net, free-at-Community-frontier, before duty :

Manufacturers/exporters	*Rate of anti-dumping duty*
Hitachi Construction Machinery Co. Ltd	12,4 %,
Japan Steel Works Ltd	2,9 %,
Kobelco-Kobe Steel Ltd	31,9 %,
Komatsu Ltd	27,6 %,
Mitsubishi Heavy Industries	21,6 %,
Others	31,9 %.

3. The provisions in force concerning customs 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 March 1985.

For the Commission

Willy DE CLERCQ

Member of the Commission