COUNCIL REGULATION (EEC) No 2382/87

of 5 August 1987

imposing a definitive anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0,75 kW but not more than 75 kW, originating in Yugoslavia

THE COUNCIL 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], as last amended by Regulation (EEC) No 1761/87 [2], and in particular Article 12 thereof,

Having regard to the proposal from the Commission submitted after consultation within the Advisory Committee as provided for under that Regulation,

Whereas :

A. Provisional measures

(1) By Regulation (EEC) No 1043/87 [3], the Commission imposed a provisional anti-dumping duty on imports of standardized multi-phase electric motors having an output of more than 0,75 kW but not more than 75 kW, originating in Yugoslavia.

B. Further proceedings

(2) After the imposition of the provisional duty, and within the period provided for by Regulation (EEC) No 1043/87, the three Yugoslav producers/exporters of the motors in question Rade-Koncar (Zagreb), Sever, (Subotica) Elektrokovina, (Maribor) submitted written observations and requested a hearing from the Commission. The latter informed them in detail of the facts and considerations on which its provisional conclusions had been based and on the basis of which it intended to propose the imposition of a definitive duty and the collection of the amounts secured by way of the provisional anti-dumping duty.

All parties were given the opportunity to make known their points of view on these conclusions within a prescribed period, and any observations they made were taken into account.

(3) In addition, the Commission made on-the-spot checks on three Italian importers of Yugoslav motors :

— Ceam, Inveruno (Milan)

— Incontrera & Wenninger, Milan

— Smem, Monza

C. Dumping

(4) The arguments put forward by the Yugoslav exporters following the preliminary establishment of dumping announced in Regulation (EEC) No 1043/87 related essentially to the level of the allowance for conditions of payment in Yugoslavia, the question of the allowance for inflation in Yugoslavia between the date of sale and the date of payment, the question of the exchange rate to be used for converting the Yugoslav dinar, and the question of differences in the cost of Yugoslav raw materials and imported raw materials.

(5) For each of the three producers/exporters, the adjustment of the normal value was revised to make allowance for conditions of payment and of credit in Yugoslavia, since the interested parties furnished proof that a request for this to be done was justified.

(6) On the other hand, none of the arguments put forward in support of the three other requests for allowances was sufficiently convincing to call into question the Commission's observations as set out in points 18, 19 and 22 of Regulation (EEC) No 1043/87. In common with the Commission, the Council therefore believes that these requests must be rejected for the reasons outlined by the Commission in the said Regulation.

(7) Without prejudice to the revision of the adjustment referred to in point 5, the considerations already advanced by the Commission with regard to the existence of dumping are therefore confirmed by the Council.

The definitive weighted average dumping margins for all the motor types of the producers/exporters concerned in the representative sample, duly corrected to allow for the revised adjustment for conditions of payment, are therefore established at the following levels : Elektrokovina, 98 % ; Rade-Koncar, 109 % ; Sever, 87 %.

[1] OJ No L 201, 30. 7. 1984, p. 1.
[2] OJ No L 167, 26. 6. 1987, p. 9.
[3] OJ No L 102, 14. 4. 1987, p. 5.

D. Injury

(8) None of the producers/exporters in question have submitted to the Commission any argument sufficiently convincing to call into question the conclusion that imports of the Yugoslav standardized multi-phase electric motors concerned caused material injury to the Community industry concerned.

(9) The Commission has therefore confirmed the reasons which led it to conclude that injury existed, as set out in point 26 *et seq.* of Regulation (EEC) No 1043/87.

(10) The company Rade-Koncar claimed that the imports and market shares of the three Yugoslav exporters should not be aggregated since they are legally and commercially independent of each other.

Despite the arguments put forward by Rade-Koncar, the Council shares the Commission's view that the effect of all imports of the Yugoslav motors in question should be considered globally. This is because the investigation has revealed the fungible nature of these products — i.e. the fact that they are mutually interchangeable and comparable in terms of their physical characteristics — and the similarity of prices charged by the different Yugoslav exporters; for the reasons indicated in point 28 of Regulation (EEC) No 1043/87, the Yugoslav standardized multi-phase electric motors are therefore in competition with each other and with similar products on the Community market.

(11) The company Sever stressed that the share of the overall Community market held by imports of Yugoslav motors had stagnated during the period which the Commission took into consideration for its analysis of injury (1982 to 85).

The Commission's investigation revealed — (cf. points 26 and 27 of Regulation (EEC) No 1043/87) — that the overall market share of imports had been at least 3,2 % to 3,3 % for the Community as a whole, thus representing a significant share of the Community market; moreover, during the same period Yugoslav penetration of the two markets where its imports are concentrated grew substantially, from 3,9 % to 4,8 % in Italy and from 13 % to 16 % in Denmark.

(12) In spite of the arguments put forward by the Yugoslav exporters, the Council therefore confirms the analysis presented by the Commission in points 26 to 33 of Regulation (EEC) No 1043/87 in its entirety, and considers that the injury caused by imports of Yugoslav motors being dumped in massive proportions must, taken in isolation, be considered to be material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2176/84.

Although production and sales of standardized multi-phase electric motors by Community manufacturers have been rising since 1982, owing to the revival of consumption of electric motors in the Community, the fact remains that the extremely low import prices of Yugoslav motors have significantly contributed to the downward pressure on Community industrial manufacturer's prices, almost all of which continued to experience losses in 1985 in the standardized motors sector. This pressure exerted by imports of Yugoslav motors on Community manufacturers' prices is shown by the existence of considerable undercutting varying between 15 % and 35 % of the reference cost price and between 10 % and 30 % of the selling prices of the most efficient producers.

In addition, the margin of undercutting is wholly attributable to dumping by the three Yugoslav exporters.

E. Community interest

(13) The Council considers that Community interests require the adoption of a trade protection measure against imports of Yugoslav motors being dumped, in order to eliminate the injury caused.

However, given the intra-Community competition which exists in the standardized multi-phase motor sector and the need to maintain as far as possible the competitiveness of the downstream industries, the Council believes it appropriate to determine the level of the measure to be taken — whatever its form — on the basis of the cost price of the most efficient industrial-scale manufacturers.

F. Undertakings

(14) Certain producers/exporters offered the Commission undertakings concerning their future exports to the Community.

(15) The Commission did not accept these undertakings. It informed the producers/exporters concerned of the reasons for its decision.

G. Definitive collection of the amounts secured by way of provisional duty; Imposition of a definitive duty

(16) In view of the above, the Council considers that the protection of Community interests calls for the imposition of a definitive anti-dumping duty on imports of the products in question originating in

Yugoslavia and the collection of the amount secured by way of the provisional anti-dumping duty imposed by Regulation (EEC) No 1043/87.

(17) As regards the form and rate of the duty to be imposed, the Council approves the considerations set out by the Commission in point 35 of Regulation (EEC) No 1043/87.

The Council considers that, in order to avoid discrimination and for the same factual reasons, the form and rate of the definitive anti-dumping duty to be imposed must be similar — allowing for differences in the physical characteristics of the products — not the same as those finally imposed by the Council in Regulation (EEC) No 864/87 [1] on imports of motors originating in the state-trading countries.

— The most appropriate type of anti-dumping duty is therefore a variable duty reflecting the difference between a minimum price expressed in ECU for each type of motor and the price to the first independent buyer.

As certain importers, in particular Sever Agrovojvodina of Copenhagen and Sever Agrovojvodina of Munich, are linked to an exporter by an association or a compensatory arrangement with a third party within the meaning of Article 2 (8) (b) of Regulation (EEC) No 2176/84, the Council considers it necessary to take as a reference point in calculating the anti-dumping duty for those importers the price paid by the first buyer not associated with the exporter. In the case of the importers in question, the net unit price, free-at-Community-frontier, will normally correspond to the customs value as determined in accordance with Article 6 of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes [2].

— As regards the level of the minimum price, the Council considers that the definitive anti-dumping duty should be fixed at the same level as the provisional anti-dumping duty, for the same reasons as those already indicated by the Commission in Regulation (EEC) No 1043/87, with particular reference to the gross profit margin attributable to the more efficient industrial producers.

The rate of the definitive anti-dumping duty is therefore much lower than the dumping margins finally established. However, having regard to the price judged necessary to provide efficient Community producers with a reasonable profit, it should be sufficient to remove the injury caused by the imports concerned to the Community standardized multi-phase electric motor industry.

(18) Finally, the Council has established that the maximum customs duty applicable in Spain and Portugal in 1986 and 1987 to the standardized multi-phase electric motors in question was greater than the Common Customs Tariff duty applicable to the same products. In order to prevent imports into these Member States from being subject to higher overall duties, it was judged appropriate to take measures ensuring that the cumulative amounts of the anti-dumping duty and the non-aligned. customs duties in Spain and Portugal are not greater than the cumulative amounts of the Common Customs Tariff duty and the anti-dumping duty,

HAS ADOPTED THIS REGULATION :

Article 1

(1) A definitive anti-dumping duty is hereby imposed on imports of standardized multi-phase electric motors having an output of more than 0,75 kW but not more than 75 kW, falling within subheading ex 85.01 B I b) of the Common Customs Tariff, corresponding to NIMEXE codes ex 85.01-33, ex 85.01-34 and ex 85.01-36, originating in Yugoslavia.

(2) The expression 'Standardized multi-phase motors' shall include all motors which are subject to international standardization, in particular to that of the International Electrotechnical Commission (IEC). The motors in question have the following standard rotation speeds : 3 000 rpm, 1 500 rpm, 1 000 rpm or 750 rpm ; the following standard output : 1,1, 1,5, 2,2, 3, 4, 5,5, 7,5, 11, 15, 18,5, 22, 30, 37, 45, 55 or 75 kW and the following standard axle heights : 80, 90, 100, 112, 132, 160, 180, 200, 250, 280 or 315 millimetres.

(3) The amount of duty shall be equivalent, for each type of motor, to the difference between the net unit price, free-at-Community-frontier, not cleared through customs, and the price specified in the Annex.

The said free-at-Community-frontier price, not cleared through customs, shall be net if the actual terms and conditions of sale provide that payment shall be made within 30 days of the date of dispatch ; it shall be lowered by 1 % for each month by which payment is actually deferred.

(4) (a) Where it appears to the customs authorities that there is an association or a compensatory agreement between the exporter and the importer or a third party within the meaning of Article 2 (8) (b) of Regulation (EEC) No 2176/84, the price actually paid or payable for the product sold for export to the Community may not be used as a reference in establishing the net unit price, free-at-Community-frontier, mentioned in paragraph 3.

[1] OJ No L 83, 27. 3. 1987, p. 1.
[2] OJ No L 134, 31. 5. 1980, p. 1.

The unit price, free-at-Community-frontier, shall in this case correspond to the customs value as it would be determined in accordance with Article 6 of Regulation (EEC) No 1224/80. Failing this, where in the case of an associated importer it would not be possible to determine the customs value in accordance with the above provisions, the net price, free-at-frontier, shall correspond to the customs value as would be determined in accordance with Article 2 (3) of that Regulation.

(b) The provisions of subparagraph (a) shall apply in particular to motors originating in Yugoslavia imported by the companies named below:

— Sever Agrovojvodina, Copenhagen,

— Sever Agrovojvodina, Munich.

(5) The provisions in force with regard to customs duties shall apply subject to this Regulation.

Article 2

Amounts secured by way of the provisional anti-dumping duty imposed by Commission Regulation (EEC) No 1043/87 shall be collected at the level of the definitive duties imposed.

Article 3

The anti-dumping duties imposed or collected pursuant to Articles 1 and 2 shall be collected on imports into Spain and Portugal only in so far as the cumulative amount of the customs duty in force in the Member State concerned and the anti-dumping duty does not, for the product in question, exceed the cumulative amount of the Common Customs Tariff duty and the anti-dumping duty concerning the same product.

Article 4

This Regulation shall enter into force on the day following that 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, 5 August 1987.

For the Council

The President

K.E. TYGESEN

ANNEX

Minimum prices for imports into the Community of certain standardized multi-phase electric motors originating in Yugoslavia

The minimum import prices referred to in Article 1 (3) of this Regulation are shown in the following table, expressed in ECU.

These prices apply to type B3 multi-phase electric motors (with retaining legs).

For other types (e.g. type B5 or B14) a supplement of 7 % must be added to the prices given below.

kW	hp	3 000 rpm	1 500 rpm	1 000 rpm	750 rpm
1,1	1,5	40,3	41,7	57,9	89,1
1,5	2	45,4	49,1	68,3	105,0
2,2	3	59,1	60,4	89,1	135,8
3	4	70,0	72,5	108,3	162,0
4	5,5	87,5	92,0	136,2	195,8
5,5	7,5	113,3	117,0	177,4	241,2
7,5	10	143,7	150,8	204,5	299,5
11	15	194,1	200,3	295,7	403,2
15	20	244,9	261,6	387,3	519,4
18,5	25	314,0	319,0	475,2	644,3
22	30	375,7	375,7	558,1	794,7
30	40	501,5	495,6	739,3	1 023,3
37	50	627,2	614,8	911,3	1 244,1
45	60	704,7	729,3	1 090,8	1 461,1
55	75	945,5	911,3	1 356,1	1 776,8
75	100	1 261,5	1 207,0	1 799,7	2 287,4