COUNCIL REGULATION (EEC) No 34/89

of 5 January 1989

imposing a definitive anti-dumping duty on imports of serial impact fully formed (SIFF) character printers originating in Japan

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), 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 the above Regulation,

Whereas :

A. Provisional action

(1) The Commission, by Regulation (EEC) No 2005/88 (2), imposed a provisional anti-dumping duty on imports of serial impact fully formed character (daisywheel) printers originating in Japan. That duty was extended for a maximum period of two months by Regulation (EEC) No 3451/88 (3).

B. Subsequent procedure

(2) Following the imposition of the provisional anti-dumping duty, a number of exporters, a number of independent importers and the complainant Community industry, requested, and were granted, an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.

(3) Upon request, parties were also informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which they could make representations subsequent to these disclosure meetings. Their comments were considered and, where appropriate, the Commission's findings were modified to take account of them.

(4) In addition to the investigations leading to the preliminary determinations, the Commission carried out further investigations at the premises of the complainant companies.

C. Product under consideration, like product and Community industry

(5) In its provisional findings, the Commission concluded that the products under consideration were serial impact fully-formed character (SIFF) printers. The Commission considered that the similarities of all SIFF printers, as far as their technical and physical characteristics, as well as their application and end use, are concerned, outweigh, for the purposes of these proceedings, their differences and that, therefore, all SIFF printers are like products. Finally, the Commission interpreted the term 'Community industry' as referring to the two Community producers which are members of Europrint.

(6) No arguments contesting these findings by the Commission were submitted. The Council confirms the Commission's conclusions as regards the product under consideration, like products and Community industry as stated in recitals 6 to 13 of Regulation (EEC) No 2005/88.

D. Normal value

(7) Normal value was, for the purpose of definitive findings, established on the basis of the methods used for the provisional determination of dumping, taking into account new evidence concerning the cif Community frontier value of the product under investigation submitted by the parties concerned.

(8) The Council confirms the Commission's provisional findings that neither of the two exporters concerned which cooperated in the investigation had sold, on the domestic market, a volume of own-brand sales of the like product more than the threshold, established by the Commission in previous cases, of 5 % of the volume of exports of these models to the Community.

(9) It was thus considered that such own-brand sales were insufficient to be representative and that, accordingly, normal value for own-brand sales should be determined for all models on the basis of the constructed value. The constructed value was established on the basis of the costs, both fixed and variable in the country of origin of materials and manufacture for the model exported to the

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 177, 8. 7. 1988, p. 1.
(3) OJ No L 302, 5. 11. 1988, p. 30.

Community plus a reasonable amount for selling, administrative and other general expenses and profit.

(10) As regards the amounts of selling, administrative and other general expenses and profit to be included in such constructed values, the Commission's provisional findings as set out in recitals 15, 16 and 19 to 23 of Regulation (EEC) No 2005/88, against which no objections were raised, are confirmed by the Council.

(11) As regards sales to Original Equipment Manufacturers i.e. models sold to, and subsequently by, the OEM companies under these companies' brand names, the Council also confirms the Commission's provisional findings in recitals 17 and 18 of Regulation (EEC) No 2005/88, against which no objections were raised.

E. Export price

(12) With regard to exports made directly to independent importers in the Community, export prices were determined on the basis of the prices actually paid, or payable, for the product sold.

(13) In all other cases, exports were made to a subsidiary company which imported the product into the Community. In such cases it was considered appropriate, in view of the relationship between exporter and importer, that export prices be constructed on the basis of prices at which the imported products was first resold to an independent buyer. Discounts, rebates and the value of free goods directly linked with a sale under consideration were deducted from the price to the independent customer and suitable adjustment was made to take account of all costs incurred between import and resale, including all duties and taxes.

(14) The Council also confirms the Commission's provisional findings regarding the calculation of export prices as stated in recitals 25 to 29 of Regulation (EEC) No 2005/88, against which no objections were raised.

F. Comparison

(15) In order to place the export price and the normal value on a comparable basis, due allowance was made for differences affecting price comparability in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88. Accordingly, the Commission took account, where appropriate, of differences such as differences in physical characteristics and differences in selling expenses, where claims of a direct relationship of these differences to the sales under consideration could be satisfactorily demonstrated. This was the case in respect of differences in credit terms, warranties, commissions, salaries paid to salesmen, packing, transport, insurance, handling and anciliary costs.

(16) Normal values were determined for the two companies concerned, ex domestic sales companies or sales organizations. Export prices were established ex export sales company or sales organisation.

(17) As regards claims made for allowances under Article 2 (10) of Regulation (EEC) No 2423/84 in respect of certain overheads and general expenses, the Council confirms the Commission's findings as set out in recitals 32 and 33 of Regulation (EEC) No 2005/88.

G. Dumping margins

(18) Weighted average values for each of the models of each exporter were compared with export prices, adjusted where necessary, of comparable models on a transaction-by-transaction basis. The examination of the facts shows the existence of dumping in respect of imports of daisywheel printers originating in Japan from both the Japanese exporters investigated. The margin of dumping was equal to the amount by which the normal value, as established, exceeds the price for export to the Community and expressed as a percentage of the respective cif Community frontier values was as follows :

— Tokyo Electric Co. Ltd, (TEC), Tokyo : 21,05 %

— Juki Corporation, Tokyo (previously Tokyo Juki Industrial Co. Ltd) : 22,01 %

(19) For those exporters which neither replied to the Commission's questionnaire nor otherwise made themselves known, dumping was determined on the basis of the facts available. In this connection, the Commission considers that the information contained in the complaint provided the most appropriate basis for determination of the margin of dumping and that it 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 (58 %) alleged in the complaint for a company which did not cooperate in the investigation. For these reasons it is considered appropriate to use this latter dumping margin for this group of exporters. The Council confirms these findings.

H. Injury

(20) In its provisional findings, the Commission concluded that the Community SIFF printers industry is currently experiencing material injury. This conclusion was mainly based on the increase in the market share of the Japanese exporters, the price depression for SIFF printers, the price undercutting by the large majority of the Japanese exporters, the increase in stocks, and the decrease

of capacity utilization and of profitability of the Community industry (see recitals 36 to 41 of Regulation (EEC) No 2005/88).

(21) Further investigations at the premises of the Community producers confirmed the existence of the abovementioned injury factors. As far as profitability (return on sales) is concerned, these investigations confirmed also that the profits of the Community industry had decreased substantially since 1984. The actual return on sales realized during the reference period by the Community industry was, however, higher than the profit rate taken into account for the provisional findings. Nevertheless, the Community industry's return of sales fell by 40 % between 1985 and 1987. On the basis of all these findings, the Council concludes that the Community SIFF printers industry is currently experiencing material injury.

I. Causation of injury

(22) In Regulation (EEC) No 2005/88, the Commission based its findings concerning causation mainly on the fact that, on the one hand, total consumption in the Community remained stable or showed only a slight decrease while the profitability of the Community industry decreased dramatically and that, on the other hand, there was considerable market penetration and price undercutting by the Japanese exporters. The further investigations have yielded no indication which would contradict these findings nor have the exporters submitted any argument contesting the Commission's conclusion. The Council concludes, therefore, that the dumped imports from Japan have caused material injury to the Community industry.

J. Community interest

(23) In assessing whether it is in the interest of the Community to take measures against the dumped SIFF printer imports, the Council confirms the Commission's considerations in recital 47 of Regulation (EEC) No 2005/88. In addition, it is considered that, in order to research and develop new printer technologies, the Community industry should be in a position to realize, at present and in future, sufficient profits on existing SIFF printer production and sales. In this respect, the Commission found that there had been a dramatic downward trend in return on sales which endangers the viability of the Community industry. The Council considers it necessary, therefore, to bring this profit erosion to an end. This would enable the Community industry to continue its investments and its research and development and, by doing so, to preserve employment in this important sector of the business automation industry. Taking into consideration the interests of OEM-buyers, distributors and end users as described in recital 49 of Regulation (EEC) No 2005/88, the Council is of the opinion that Community interests call for granting protection to the Community industry against unfair business practices.

K. Duty

(24) When applying the duty calculation method, as explained in recitals 52 to 60 of Regulation (EEC) No 2005/88, for definitive measures, the Commission had to take account of two new factors. First, the return on sales for SIFF printers was found to be higher than the figure used for the provisional duty calculation (see recital 55 of the provisional duty Regulation). Secondly, as far as the non-cooperating exporters were concerned, the cif value established on the basis of the average cif value calculated for the export of serial impact dot matrix printers was found to be higher than calculated for the provisional findings, i.e. 74,8 % of the average resale prices to the first independent buyer.

(25) As regards the actual profit realized by the Community industry, Europrint submitted two arguments. First, the profit margin of 12 % (expressed as return on sales), considered appropriate by the Commission (see recital 52 of Regulation (EEC) No 2005/88), was too low, and secondly, the profit realized during the reference period (which was higher than that used by the Commission in its provisional calculation) was highly influenced by satisfactory results on the Italian market where the market presence of Japanese exporters was limited. Therefore, only the German, UK and French markets could be considered representative. On these markets, the returns on sales were much lower.

(26) As regards these arguments, the Council considers that for sales of SIFF printers which have been on the market for a considerable period and for which the technological importance has been reduced by the appearance of more sophisticated print technologies, a profit margin of 12 % is reasonable.

(27) As far as the requested exclusion of the Italian market from the profit calculation is concerned, the Council considers that such an exclusion is not justified. According to Article 4 (4) of Regulation (EEC) No 2423/88, the effect of the dumped imports shall be assessed in relation to the Community production, and paragraph 5 of the same Article stipulates that, for injury assessments, only in exceptional circumstances can the

Community be divided into two or more competitive markets. No evidence of such exceptional circumstances has been submitted.

(28) The Europrint arguments could, therefore, not be accepted.

(29) On the basis of the injury threshold calculation method described in recitals 53 to 60 of Regulation (EEC) No 2005/88, and taking into account the two factors mentioned in recital 24 above, the Commission found that, for the two Japanese exporters which cooperated with the Commission, no price increase at the Community frontier would be required to remove the injury caused by Japanese imports of SIFF printers. As far as the non-cooperating exporters are concerned, the result of the calculation is that, for these exporters, the prices have to be increased by 23,5 % in order to remove the injury.

(30) Accordingly, and in order that the injurious effect of the dumped imports should be eliminated, the Council considers it appropriate that the amount of definitive duty to be imposed should be 23,5 % for the exports of all Japanese exporters except TEC and Juki Corporation. The latter two exporters should be exempted from anti-dumping duties.

(31) The definitive anti-dumping duty should apply to all serial impact fully formed printers from Japan.

L. Undertakings

(32) A number of exporters other than the two which cooperated fully in the investigation offered undertakings. However, it was considered by the Commission, after consultation, that these undertakings should not be accepted since the nature of the undertakings offered was such that their acceptance would not offer a solution which was as appropriate as the imposition of a definitive anti-dumping duty in the prevention of unfair business practices.

M. Collection of provisional duty

(33) In view of the importance of the dumping margins established and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts by way of provisional anti-dumping duty should be collected to a maximum of the duty definitively imposed. Provisional anti-dumping duties collected or securities received for SIFF printers which are not covered by the definitive anti-dumping duty should be released.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on impots of serial impact fully formed printers falling within CN code ex 8471 92 90 and originating in Japan.

2. The rate of duty shall be 23,5 % of the net free-at-Community-frontier price before duty, with the exception of imports of the products specified in paragraph 1 which are sold for export to the Community by Juki Corporation and Tokyo Electric Co. Ltd, which are exempted from this duty.

Article 2

The amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 2005/88 shall be collected at the rate of duty definitively imposed. Secured amounts which are not covered by the rates of duty definitively imposed shall be released.

Article 3

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 January 1989.

For the Council

The President

F. FERNANDEZ ORDOÑEZ