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*(Acts whose publication is obligatory)*

# COUNCIL REGULATION (EEC) No 117/91

## of 16 January 1991

## imposing a definitive anti-dumping duty on imports of linear tungsten halogen lamps 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, presented after consultations within the Advisory Committee in accordance with that Regulation,

Whereas :

### A. PROVISIONAL MEASURES

(1) Commission Regulation (EEC) No 2064/90 [1] imposed a provisional anti-dumping duty on imports originating in Japan of linear tungsten halogen lamps (hereinafter referred to as LTH lamps) for a voltage exceeding 100 volts, of 100 watts or more, double-ended with R7s caps, of a type used for illumination, falling within CN code ex 8539 21 91. Regulation (EEC) No 3307/90 [2] extended this duty for a period not exceeding two months.

### B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional duty, three producer/exporters mentioned in Regulation (EEC) No 2064/90 and the complainant individually requested and were granted hearings before the Commission on the conclusions set out in the above Regulation. They also made known their views in writing.

(3) The parties were also informed, at their request, of the main facts and considerations behind the Commission proposal to recommend the imposition of definitive anti-dumping duties and definitive collection of the amounts secured by way of the provisional duty. They were also given the opportunity to make comments after receiving this information. Their comments were examined and, where appropriate, taken into account in the Commission's conclusions.

### C. PRODUCT

(4) One producer/exporter claimed that the definition of the products concerned by the proceeding, given in recital (10) of Regulation (EEC) No 2064/90, is inadequate to the extent that it fails to specify that some types of tungsten halogen tubes are not used for illumination and are therefore beyond the scope of the proceeding. The proceeding covers linear tungsten halogen lamps for a voltage exceeding 100 volts, of 100 watts or more, double-ended with R7s caps, of a type used for indoor or outdoor illumination. This means that it does not cover linear tungsten halogen tubes which can be used only as components of specialized appliances, such as photocopiers or photographic lamps, and not for indoor or outdoor lighting. It should, however, be specified that LTH lamps which can be used both for lighting and another more specific purpose are covered by the proceeding.

### D. DUMPING

#### (a) Normal value

##### I. *Domestic market price*

(5) The producer/exporter mentioned in recital (15) of Regulation (EEC) No 2064/90 repeated its argument that quantities of two of its models sold on the Japanese market should be adjusted downwards to allow for certain 'negative transactions', which

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 188, 20. 7. 1990, p. 10.
[3] OJ No L 318, 17. 11. 1990, p. 1.

they claimed were effectively 'notional' transactions connected particularly with cancelled sales orders and the transfer of sales from one year to the next. Domestic sales of the models in question would then account for slightly less than 5 % of the quantities exported and their price could not be used to calculate normal value.

(6) The Council, however, confirms the Commission's conclusions on this point, on which no new evidence was submitted. These transactions had to be considered representative of normal conditions of supply and demand during the period in question and their subsequent cancellation or transfer in no way diminished their representative value. The volume of domestic sales of each of these two models is therefore greater than 5 % of the quantities of these models exported to the Community and consequently provides a suitable basis for calculating the normal value of LTH lamps in Japan.

(7) Two other producer/exporters again contested the use of the price of the models in question to calculate a normal value which they disputed. They once more claimed that Japan's domestic market in these LTH lamps was very small, that demand was limited and irregular, and that there was no competition.

(8) The Council is unable to accept these arguments. The Commission had already found that there were other producers of LTH lamps in Japan, most of which did not cooperate in the investigation or claimed not to export to the Community (see recitals (6), (7), (8) and (17) of Regulation (EEC) No 2064/90). There is indeed a Japanese domestic market with several firms in active competition.

The size of the market could not be ascertained owing to the lack of cooperation from other Japanese producers, including several which did not deny having exported to the Community during the reference period. Even if the market were relatively small, this would not in itself make the actual prices in Japan an unsuitable basis for comparison and so justify a departure from the usual practice of establishing normal value on the basis of domestic sales of models which, by volume, exceed 5 % of export sales to the Community. Neither may any such conclusion be drawn from the fact that the firms concerned in this proceeding concentrate their efforts on the export market. It should also be emphasized that, as already noted by the Commission (in recital (17) of Regulation (EEC) No 2064/90), the domestic market prices established by this method are entirely borne out by the catalogues of the seven Japanese producers. When the average price of each model is adjusted to allow for a discount of the size alleged in the complaint and confirmed by the investigation, the resulting prices are on a level with those for models sold by a producer/exporter on the Japanese market. An investigation would naturally have resulted in still more exact information being gathered. However, this was made impossible by a lack of cooperation from several other Japanese exporters of LTH lamps to the Community. In such circumstances, the catalogue prices adjusted by an average discount constitute facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. Moreover, the Commission's findings concerning the overall level of prices for this product on the Japanese market were further substantiated by information from a non-exporting Japanese producer, which did, however, sell significant quantities of LTH lamps on the domestic market. Both for these reasons and on the basis of the 5 % rule, prices for the two models sold by a producer/exporter on the Japanese market must be taken to be representative.

(9) The same producer/exporters also maintained that the method by which normal value was established, selected from those proposed in the basic anti-dumping Regulation, should have been one which permitted the use of an exporter's own data and so the calculation of an individual dumping margin. They claimed that, if another exporter's domestic sales of the two models sold in Japan represented less than 5 % of their own exports of the models in question, the rule should not apply to them, since there was nothing to say that a market thought viable by one exporter would be viable for them. Repeating an argument used before the imposition of provisional duties, they asserted that reference should have been made to the domestic market prices for JD lamps, a product they considered

similar to LTH lamps and which they sold in more representative quantities on the Japanese market (see recital (22) of Regulation (EEC) No 2064/90). Lastly, one of the producer/exporters maintained that the price of its exports to third countries could also have been used to establish normal value.

(10) The Council notes that the Commission calculated normal value individually for each producer/exporter to the extent permitted by Article 2 (3) of Regulation (EEC) No 2423/88. Article 2 (3) (a) covers the case in which a like product, within the meaning of Article 2 (12) of the above Regulation, is sold on the domestic market. The like product was defined in recital (11) of Regulation (EEC) No 2064/90. It is incontestably supplied and sold on the Japanese market. Article 2 (3) (a) was therefore applicable if domestic sales of the product were sufficient.

(11) The Commission had concluded that JD lamps were not a like product to LTH lamps. They lacked the linear form of LTH lamps, their single cap was not of the type R7s and their wattage was in most cases lower than 100 watts. The Council confirms these conclusions. Consequently, the normal value for the two models of LTH concerned must be established on the basis of the actual prices for these models on the Japanese market.

II. *Export prices in third countries*

(12) The Commission had considered the request for such prices to be used for constructing normal value (see recital (23) of Regulation (EEC) No 2064/90). One producer/exporter stated that, as in the case of reference to a like product, its request had been presented, not in this context, but in that of Article 2 (3) (b) (i) of Regulation (EEC) No 2423/88.

(13) The Council cannot accept this argument. Since it is possible to refer to prices paid or payable on the Japanese market itself, it is preferable to construct normal value on this basis rather than by using market prices in third countries.

III. *Constructed value*

(aa) For own brand sales

(14) None of the other models exported to the Community were sold on the domestic market. Normal value must therefore be established according to Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88. This gives priority to the use of evidence relating to like products sold on the domestic market, either by the producer/exporter concerned, or, if such data is unavailable, by reference to the expenses incurred and the profits realized by other producers or exporters in the country of origin on profitable sales of like products. Reference may only be made to the sales made by the exporter concerned or other producers or exporters in the same business sector if the first two methods cannot be used.

(15) In applying these provisions, the Commission took as a basis the fact that a like product was sold on the domestic market by a producer/exporter and that these sales could be considered representative (see recital (8)). It then established normal value, for the two producer/exporters concerned, using the second method contained in Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88 which involves taking account of their production costs, plus expenses incurred and profit realized on domestic sales of the like product by another producer/exporter.

The Council considers that this method leads to the greatest possible individualization of normal value for the producer/exporters concerned on the basis of their individual production costs.

(bb) For sales to OEM customers

(16) When calculating the constructed value of the models concerned, the Commission took account of the specific nature of sales by producer/exporters selling mainly OEM models (see recital (20) of Regulation (EEC) No 2064/90). Differentiation between types of sales allows normal value to be adjusted to an appropriate degree for each individual producer/exporter. However, the Commission considered, on the basis of comments by some producer/exporters, that the estimated reasonable profit margin in these cases should be set at a third of the margin achieved when the producer sells under its own brand. The Council agrees to this method of calculating constructed normal value.

(b) **Export prices**

(17) No comment was made on the export price established in Regulation (EEC) No 2064/90.

(c) **Conclusions**

(18) In the light of the above, the Council confirms the conclusions concerning dumping set out in recitals (14) to (25) of Regulation (EEC) No 2064/90.

## E. COMPARISON

(19) No comment was made on recitals (26) to (29) of Regulation (EEC) No 2064/90, which deal with this aspect. The Council confirms these conclusions.

## F. DUMPING MARGIN

(20) The Council confirms the Commission's findings set out in recitals (30) to (32) of Regulation (EEC) No 2064/90. However, the provisionally calculated dumping margins are affected by the revised estimate of the differences between the profit margin on own brand sales and that on sales to OEM (see recital (14) of this Regulation). The resulting dumping margins amount to ECU 2,3 for Iwasaki, ECU 1,5 for Sigma and ECU 1,2 for Phoenix on average per unit and still exceed the duty required to eliminate the injury (see recital (32) of this Regulation).

## G. INJURY

(21) Certain producer/exporters criticized the Commission's conclusions regarding undercutting, pointing out the lack of any allowance for 'goodwill' and physical differences between the Japanese products and those manufactured by the Community industry. They claimed that, if prices were equal, consumers would prefer to buy Community brands, which were well known and packaged, reputed to be of good quality and, compared with products of Japanese origin, enjoyed an excellent image in terms of reliability and service.

(22) Information received from both exporters and the Community industry led the Commission to the opposite conclusion. No objective evidence was submitted of any difference, whether physical, technical or related to quality or service, which would have justified the requested adjustment in the calculation of undercutting. Quite apart from the issue of the admissibility of such a principle, there was no evidence to support the request to allow for greater goodwill.

(23) The same producer/exporters also calimed that, when calculating undercutting, the Commission had underestimated the amount it had provisionally allowed to cover the fact that the Community industry sold mainly to dealers and Japanese exporters mainly to manufacturers and distributors of light fittings (see recital (38) of Regulation (EEC) No 2064/90).

The Commission reexamined the information at its disposal and concluded that there was some substance to this request, in view of the differences in costs and sales overheads depending on the type of customer to whom LTH lamps are sold.

The Council confirms this reassessment, whereby undercutting by Japanese exporters is put at between 14,3 % and 20,4 % depending on the case, the weighted average being 18,9 %. These percentages remain significant and do not alter the Commission's conclusions in recital (44) of Regulation (EEC) No 2064/90 regarding the determination of material injury to the Community industry. It must, furthermore, be noted that even without undercutting, which is only one of the factors to be considered, the conclusion would have been the same. Injury was assessed on the basis of the alleged undercutting of a minimum price established for Community products, without dumping, and not in relation to the undercutting of actual prices subject to downward pressure from massive imports.

(24) No new evidence of material injury was presented. consequently, except for the assessments of price undercutting, the Council confirms the Commission's conclusions on injury as they are set out in Regulation (EEC) No 2064/90.

## H. CAUSATION

(25) Some producer/exporters criticized the Commission's rejection of their argument that allowances should be made for their greater productivity (see recitals (49) and (50) of Regulation (EEC) No 2064/90). They claimed that their comparative advantage in terms of production costs justified selling on the Community market at prices lower than those of the Community industry and was therefore a factor, unrelated to imports at dumping prices, which had contributed to the injury. They contest the Commission's assertion that the argument is relevant only where these advantages are reflected without discrimination by both domestic and export prices, and maintain that price discrimination is relevant only in the context of a dumping

investigation but is not in itself a cause of the injury to the Community industry. They also accuse the Commission of having perceived a causal link between the alleged greater productivity and the dumping observed.

(26) The Council cannot accept these arguments and confirms the Commission's position. As noted in recitals (46) and (47) of Regulation (EEC) No 2064/90, there is a striking concomitance between the volume growth and the expansion of the market share of imports of LTH lamps originating in Japan and the decline in market share and the financial losses suffered by the community industry in a market in full expansion. Furthermore, export prices exerted a steady downward pressure on LTH lamp prices in the Community, obliging Community producers to sell at a loss and preventing them from stepping up their sales effort and making the investment needed to improve productivity. Consequently, the state of the Community industry can be explained mainly by facts directly related to imports originating in Japan, which proved to have been dumped during the reference period, and not by factors related to the efficiency of the firms concerned.

(27) Contrary to their claims, any comparative advantage enjoyed by Japanese exporters in terms of production costs, and the way this is reflected on the domestic and export markets, must be examined in an investigation of whether dumping has taken place. However, when the causes of injury are being examined, Article 4 (1) of Regulation (EEC) No 2423/88 requires verification that the material injury to the Community industry is a consequence of imports at dumping prices. Had these imports not been dumped, their price would necessarily have been higher. Therefore only the impact of their actual prices on Community production, independent of any cost-related considerations, had to be examined. On the basis of this examination, the Commission established a causal link between imports of LTH lamps at dumping prices and the material injury, a conclusion which the Council confirms.

(28) As the Commission had found when examining the possible impact of other factors, there were very few other imports in the course of the investigation period. Demand was expanding strongly and there was no appreciable technology gap between production in Japan and in the Community. Apart from the injurious consequences of dumping by the producer/exporters in question, there was no evidence to cast doubt on the efficiency of the Community LTH lamp industry. The loss of market share and the worsening financial situation of Community producers cannot therefore be attributed to other factors.

(29) Consequently, the Council adopts the Commission's conclusions (see recital (51) of Regulation (EEC) No 2064/90) whereby the effects of dumped imports of LTH lamps originating in Japan, taken in isolation, have to be considered as causing material injury to the Community industry.

## I. COMMUNITY INTEREST

(30) Two producer/exporters again suggested that there was a danger of Japanese imports being replaced by low-priced imports from other non-Community countries (see recital (61) of Regulation (EEC) No 2064/90), if high anti-dumping duties were imposed. They submitted several price quotations for LTH lamps of Chinese or Korean origin.

(31) As noted by the Commission, price quotations were not proof of an effective increase in imports originating in non-Community countries other than Japan since the end of the investigation period, during which their quantity had been insignificant. None of the mainly statistical information studied by the Commission substantiated this allegation.

In view of the uncertainty of the development of imports originating in countries other than Japan, the Council confirms the Commission's findings set out in point I of Regulation (EEC) No 2064/90 and believes it in the Community interest to impose anti-dumping measures to eliminate the injurious effects of imports originating in Japan.

## J. DUTY

(32) In Regulation (EEC) No 2064/90, the Commission calculated a minimum price corresponding to that at which Community products would sell if there were no dumping. This calculation took account, as indicated in recital (66) of that Regulation, of the undercutting observed. The Council confirms this method of calculating the duties. Account should, however, be taken of the reassessments accepted in this Regulation (recital (23)) regarding the allowances provisionally made by the Commission when calculating undercutting. The Commission proposed that the injury threshold be established in relation to the production costs of a Community manufacturer of LTH lamps producing quantities and applying a technology that could be considered representative of the Community industry. The

Council endorses this proposal. Thus the following definitive anti-dumping duties are required for each exporter in order to eliminate the injury suffered :

— Iwasaki : 35,6 %,
— Phoenix : 45,5 %,
— Sigma : 46,5 %.

Since the dumping margins found for all the exporters concerned exceed the injury level, the above duties will be imposed in accordance with Article 13 (3) of Regulation (EEC) No 2423/88.

(33) The Council confirms, for the reasons stated by the Commission in recital (69) of Regulation (EEC) No 2064/90, that the highest duty, i.e. 46,5 %, should be applied to firms which did not respond to the Commission's questionnaire.

## K. COLLECTION OF THE PROVISIONAL DUTIES

(34) In view of the dumping margins found and the material injury caused to the Community industry, the Council considers it necessary to definitively collect from the amounts secured by way of the provisional anti-dumping duty a sum amounting to the definitive duty imposed.

## L. UNDERTAKINGS

(35) Following the imposition of the provisional duties, Iwasaki Electric Co., Ltd, Phoenix Electric Co., Ltd and Sigma Corporation offered an undertaking concerning future exports of their LTH lamps to the Community.

After consultations, these undertakings were not considered acceptable by the Commission. The Commission has notified the producer/exporters concerned of the reasons for this decision,

HAS ADOPTED THIS REGULATION :

*Article 1*

1. A definitive anti-dumping duty of 46,5 % of the net, free-at-Community-frontier price, before duty is hereby imposed on imports of linear tungsten halogen lamps, falling within CN code ex 8539 21 91 (Taric code : 8539 21 91 91) and originating in Japan (additional Taric code : 8462).

2. The rate of duty for the products manufactured by the following companies shall be :

— Iwasaki Electric Co., Ltd : 35,6 % (additional Taric code : 8460),
— Phoenix Electric Co., Ltd : 45,5 % (additional Taric code : 8461).

3. The duty specified in paragraphs 1 and 2 shall apply only to linear tungsten halogen lamps for a voltage exceeding 100 volts, of 100 watts or more, double-ended with R7s caps, of a kind used for indoor or outdoor illumination. This duty is not applicable to linear tungsten halogen lamps used exclusively as components of devices not intended for lighting.

4. The provisions in force concerning customs duties shall apply.

*Article 2*

The amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 2064/90 shall be definitively collected at the duty rate definitively imposed. Amounts secured which are not covered by the definitive rate of duty shall be released.

*Article 3*

This Regulation shall enter into force on the day 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, 16 January 1991.

*For the Council*
*The President*
J. F. POOS