COMMISSION REGULATION (EEC) No 1451/92

of 2 June 1992

imposing a provisional anti-dumping duty on imports into the Community of certain large electrolytic aluminium capacitors 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 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 11 thereof,

After consultation within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. PROCEDURE

(1) In January 1991, the Commission received a written complaint lodged by the Federation for Appropriate Remedial Anti-Dumping (Farad) which represents a major proportion of the Community production of large electrolytic aluminium capacitors. The complaint contained evidence of dumping of the said product originating in Japan and of material injury resulting therefrom. This evidence was considered sufficient to justify the initiation of a proceeding.

(2) The Commission accordingly announced by means of 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 certain large electrical capacitors, aluminium electrolytic, with a CV product (capacitance multiplied by rated voltage) between 18 000 and 310 000 μC (micro-coulombs), originating in Japan falling within CN code ex 8532 22 00 (hereafter referred to as 'LAECs') and commenced an investigation.

(3) The Commission officially advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainant. Parties directly concerned were given the opportunity to make their views known in writing and to request a hearing.

Three out of the seven known producers in Japan informed the Commission that they would not cooperate in the proceeding.

(4) Representatives of the exporters, the complainant and one importer made their views known in writing. Some exporters and related importers requested and were granted hearings. Representations were also made by a Community user of the product concerned.

(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 :

(a) *Community producers*

B.H. Components Ltd, Weymouth, United Kingdom,

Nederlandse Philips Bedrijven BV, Zwolle, Netherlands,

Roederstein GmbH, Kirchzarten, Germany ;

(b) *Producers in Japan*

Elna Co. Ltd, Fujisawa City, Kanagawa,

Nichicon Corporation, Kyoto,

Nippon Chemi-con Corporation, Tokyo,

Rubycon Corporation, Ina Nagano ;

(c) *Importers in the Community*

Germany

— Europe Chemi-con (Deutschland) GmbH, Nürnberg,

— Rubycon (Europe) GmbH, Düsseldorf,

United Kingdom

— Nichicon Europe Ltd, Camberley,

— Rubycon Corporation (UK branch), Ruislip,

Netherlands

— Philips Consumer Electronics BV, Eindhoven.

(6) The investigation of dumping covered the period from 1 January 1990 to 31 December 1990 (the investigation period).

B. COMMUNITY INDUSTRY

(7) The Commission found that four large producers of LAECs and some small producers are established in the Community. Three of these large producers supported the complaint.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 93, 11. 4. 1991, p. 5.

The fourth large producer, Siemens-Matsushita Components GmbH & Co. KG, Munich, Germany, is a joint venture between a Community and a Japanese enterprise. Neither this Japanese enterprise, which is itself an exporter of capacitors to the Community, nor the joint venture chose to cooperate in the proceeding.

In these circumstances the Commission considered, in application of Article 4 (5) of Regulation (EEC) No 2423/88 (hereafter referred to as the 'basic Regulation'), that this joint venture should not form part of the Community industry for the purpose of this proceeding.

The output of the producers represented in the complaint accounted for more than three-quarters of the total output of the remaining producers and therefore constituted the major proportion of the Community industry for the purposes of the present proceeding.

(8) Some exporters stated that one of the complaining producers, Nederlandse Philips Bedrijven BV, could not be considered as part of the Community industry in the light of Article 4 (5) of the basic Regulation. The reason given was that another company within the Philips group, namely Philips Consumer Electronics BV, had been importing LAECs from Japan during the investigation period for incorporation in electronic consumer durables manufactured by subsidiaries within the Philips group.

(9) In addressing this issue the Commission notes that Article 4 (5) of the Basic Regulation confers on the Institutions the responsibility for assessing whether certain producers with links to importers or to exporters or who are themselves importers of the product should be excluded from the definition of Community industry. Consequently, the exclusion of these producers must be decided by the Institutions on a case-by-case basis on reasonable and equitable grounds and taking into consideration all aspects involved.

(10) Examination of the facts showed that Philips Consumer Electronics BV, which in the past had been a traditional customer of Nederlandse Philips Bedrijven BV, had imported LAECs from Japan during the reference period. The Commission noted that the imported LAECs were used by Philips Consumer Electronics BV exclusively as components for its own production of electronic products and that the imported LAECs were never resold in the Community market. The Commission further noted that Philips Consumer Electronics BV had little choice but to be supplied from Japanese exporters in view of the very important price differential between their products and those of Community producers, in particular those of Nederlandse Philips Bedrijven BV. Any other behaviour would have been against its economic interests and would have put it at a competitive disadvantage since its competitors had free access to the low-priced imported products and could therefore improve their cost competitiveness in the very competitive consumer electronics market. The choice of Philips Consumer electronics BV to be partly supplied by Japanse exporters rather than by a company within the group was made possible by the structuring of Philips in different profit centers which are free to obtain their supplies from any producer which can provide them with the best price and market conditions. It did not presuppose that the primary interest of Philips went from producing into importing; the commitment of Philips to the Commission during the investigation.

(11) For these reasons the Commission considers that the imports made by Philips Consumer electronics BV can be considered a perfectly legitimate and justified business decision. Philips Consumer Electronics BV imported the dumped produtcs only in so far as it was necessary to maintain its competitivity in the consumer electronic products market. It did not derive any other undue benefit from its imports, as is underlined by the fact that it did not resell any imported Japanese capacitors but used them exclusively in the manufacture of other products. The fact itself that Nederlandse Philips Bedrijven Bv was an active supporter of the complaint, and that Philips Consumer Electronics BV cooperated with the investigation, indicates that the imports of the product concerned were considered as a necessary commercial measure only until the time when fair conditions of competition were restored in the Community market. Philips participation in the complaint cannot, therefore, be considered as inconsequential or objectionable behaviour.

(12) In these circumstances the Commission considers that no reasonable grounds exist to exclude Nederlandse Philips Bedrijven BV from the Community industry and that the three producers supporting the complaint satisfy the requirements to be regarded as the Community industry within the measning of Article 4 (5) of the basic Regulation.

C. PRODUCT UNDER INVESTIGATION; LIKE PRODUCT

(13) The notice of initiation referred to 'large electrical capacitors, aluminium electrolytic, with a CV product (capacitance multiplied by rated voltage) between 18 000 and 310 000 μC (micro-coulombs) falling within CN code ex 8532 22 00'.

Some of the producers claimed that the product subject to investigation exported to the Community could be more precisely defined by adding certain requirements. The complainant did not object to this request and the preliminary investigation has shown that it is possible to define more precisely the product concerned in the manner suggested by the exporters by adding the following requirements : 'At a voltage of 160 V or more and with a diameter of 19 mm or more and a length of 20 mm or more'. It is therefore confirmed that all the findings of these provisional determinations should refer to the product as defined with the addition of those requirements.

(14) Capacitors perform a certain number of functions and are a component in virtually all types of electronic equipment manufactured for the computer, telecommunications, instrumentation, industrial, military, automotive and other consumer markets. The types of capacitors covered by this proceeding are used in consumer electronic durables such as television sets, video cassette recorders, personal computers, etc.

The investigation has shown to the Commission that the various types of LAECs sold on the Japanese market are, despite minor differences in size, lifespan, voltage or design, largely similar to each other and to the exported LAECs.

The Commission found that the products produced and sold by the Community industry have the same basic technology as those sold in and exported from Japan and are alike in their essential physical and technical characteristics as well as in their applications and uses.

(15) The Commission considered, therefore, that the LAECs produced and sold by the Community manufacturers form one single category of product and, within the meaning of Article 2 (12) of the basic Regulation, constitute a product alike in all respects to the product imported from Japan.

D. DUMPING

1. Normal value

(16) Normal value was provisionally established on the basis of constructed values in accordance with Article 2 (3) (b) (ii) of the basic Regulation as the sales in Japan of the models identical to those exported to the Community, were not sufficient to permit a proper comparison as they were sold in quantities which accounted for less than 5 % of the export sales for the particular model concerned.

Constructed values were determined for each of the producers by taking the cost of production of the models exported to the Community and adding, for each producer, their individual average domestic selling, general and administrative expenses for all LAECs sold in Japan and a profit rate calculated on a weighted average basis on their profitable sales of LAECs in Japan. The Commission noted that the domestic transactions from which the sales, general and administrative expenses and the profit were calculated were made in considerable quantities and could therefore be considered as representative.

(17) One of the producers had reported the cost of production according to the standard cost method. The investigation showed that real cost variance was considerable and consequently all costs of production were adjusted accordingly. The same producer included in its sales and general and administrative expenses a negative entry relating to income from financial investments. The Commission disallowed this deduction as these financial revenues had no connection with the manufacture of capacitors.

2. Export price

(18) Export prices were determined for the purpose of the preliminary findings on the basis of the prices actually paid or payable for the products sold for export to the Community.

In the case of sales made by producers to related importers in the Community, export prices were constructed on the basis of resale prices to the first independent purchaser adjusted to take account of all costs incurred between importation and resale and a profit margin of 5 % which was considered reasonable in view of the information available.

3. Comparison

(19) Normal values were compared with export prices on a transaction-by-transaction basis at an ex-factory level and at the same level of trade. As far as differences in conditions and terms of sale are concerned, allowances were granted in accordance with Article 2 (9) and (10) of the basic Regu-

lation and limited to those which bore a direct relationship to the sales under consideration and where the Commission was satisfied that the allowances were justified.

(20) One of the Japanese producers claimed that credit terms on its domestic sales were different from credit terms on its export sales and accordingly requested an allowance. Examination of the facts showed that there was no distinction between the rates applied to credit for export or for domestic sales and therefore the allowance was not granted. The same producer claimed allowances in relation to normal value for salesmen's salaries and transport costs. The amount of the allowance for salesmen's salaries was adjusted to take account of the fact that some of the personnel for which the allowance had been claimed were not wholly engaged in direct selling activities. The amount of the allowance for transport was also adjusted as examination of the facts showed that the transport costs to which the allowance referred included transport between the factory and the producer's warehouses which are not allowable under Article 2 (10) (c) (i) of the basic Regulation.

(21) Another Japanese producer claimed allowances in relation to normal value on freight, travel and communication expenses which had to be partially or totally rejected.

The claimed allowance on freight included transport costs from the factory to the sales offices of the producer which are not allowable under Article 2 (10) (c) (i) of the basic Regulation. Allowances claimed for travel and communication expenses were not granted as these are not provided for under the basic Regulation.

4. Dumping margins

(22) The preliminary examination of the facts showed the existence of dumping in respect of imports of the product concerned originating in Japan.

The weighted average dumping margins provisionally established for each producer and expressed as a percentage of the total cif value of the imports are as follows:

Elna Co. Ltd	35,8 %
Nichicon Corporation	20,1 %
Nippon Chemi-con Corporation	14,1 %
Rubycon Corporation	43,1 %.

(23) The Commission has noted that the exports reported by the cooperating Japanese producers accounted for approximately one-third of total imports into the Community of the product concerned originating in Japan.

For non-cooperating producers, the Commission had to resort to other facts available, in accordance with Article 7 (7) (b) of the basic Regulation. In the light of the low level of exports covered by the investigation, it was considered that the highest dumping margin found for a cooperating exporter could not be held to be representative for the non-cooperating exporters.

This approach was considered necessary in order not to provide an unacceptable bonus for non-cooperation, not to discriminate *vis-à-vis* the cooperating exporters and to ensure that measure to be taken would constitute an effective protection for the Community industry.

(24) Therefore, for those producers which did not reply to the Commission's questionnaire, it was considered appropriate, for provisional determinations, to establish the dumping margin on the basis of the highest dumping margin found for a particular model sold in significant quantities by one of the cooperating producers. Sales of this model accounted for 27 % of the exports of that producer and for 7 % of all exports of the cooperating producers. The provisional margin of dumping established on that basis for the non-cooperating exporters is 75 %.

E. INJURY

1. Volume of Community market and market shares of dumped imports

(25) While the apparent Community consumption of LAECs increased from 50,6 million units in 1988 to 57,2 million units in 1990, the estimated dumped imports of LAECs of Japanese origin rose from 14 million units in 1988 to 22 million units in 1990. This development has led to a rise in the Community market share held by Japanese producers from 27,7 % in 1988 to 38,5 % in 1990 which represents an increase of 39 %.

2. Prices of dumped imports

(26) The prices of the imported LAECs from Japan, during the investigation period, were substantially below the prices practised by the Community producers. With regard to price undercutting, the Commission has compared the prices for each of the exporters concerned of its sales to first independent customers in the Community, at the same level of trade, with the prices of the Community producers, for sales to first independent customers in the Community.

The Commission made this comparison on a per model basis for each of the imported models which were considered for the dumping determination. Adjustments were also made where appropriate to ensure comparability in terms of transport costs deducted from the Community selling prices.

The result of this comparison showed weighted margins of undercutting, which varied for the cooperating exporters between 33,7 and 62,7 %.

In this respect the Commission notes that the Japanese exporters have consistently sold below their cost of production in the Community market while enjoying high profits in their domestic market.

3. Situation of the Community industry

(a) *Production, capacity, utilization rate and stocks*

(27) The Commission established that the production of the Community industry increased from 10,6 million units in 1988 to 15 million units in 1990.

(28) The capacity of the Community industry increased between 1988 and the investigation period from 20,1 million units in 1988 to 37,6 million units in 1990. Total capacity utilization, however, dropped considerably from 52,9 % in 1988 to 39,9 % in 1990. Stocks increased between 1988 and 1990 from 1,4 million to 2,2 million units.

(b) *Sales and market share*

(29) The sales volume of the Community industry increased slightly between 1988 and 1989 but stagnated between 1989 and 1990. the total sales in terms of value, however, show a strong decrease since 1989.

(30) Although it has not been possible for the Commission to establish indisputable market shares in terms of value for each of the different competitors in the market due to the non-cooperation of certain producers, it is clear, however, from data concerning sales of the Community industry, that while its market share in terms of volume fluctuated only slightly, it decreased very substantially between 1989 and 1990 in terms of value. This shows that the Community industry was forced to cut its prices considerably and that it had to sacrifice profitability in order to maintain its market share.

(c) *Prices*

(31) As a consequence of price undercutting by the Japanese exporters, sales prices of the Community industry went steadily downwards and thus suffered price depression between 1988 and 1989. The Community industry had to tailor its prices to the prices set in the market by the dumped imports. Using the index 1988 — 100 as a basis, prices of the Community products fell to 88,5 in 1990.

(d) *Profitability*

(32) The considerable price undercutting practised by the Japanese exporters forced the Community producers to decrease their prices to a loss-making level. In 1988, the Community industry suffered weighted average losses of 6,05 %. In 1989 this seemed to improve slightly with losses of 2,06 %, but in 1990, losses rose substantially to 15,2 %.

4. Conclusion on injury

(33) In view of the above factors, the Commission considers that the Community industry has suffered material injury, within the meaning of Article 4 (1) of the basic Regulation, mainly in the form of loss of profitability and loss of market share.

F. CAUSALITY

1. Effects of dumped imports

(34) The investigation showed that the increase in volume and market share of the dumped imports coincided with the deterioration of the situation of the Community industry.

The price sensitivity of this product and the transparency of the market, together with the widespread predatory pricing of some of the cooperating Japanese producers, clearly had a depressive effect on the prices of the Community industry and inevitably caused injury as customers chose to be supplied at the lower prices of the dumped products.

(35) In addition, as the Community industry was unable to charge profitable prices due to the substantial price undercutting effect of the dumped imports, it was prevented from making sufficient use of its extended capacity. It was thus unable to benefit from the increased demand which ocurred between 1988 an 1990 and the economies of scale which would have resulted from an increased sales volume. All these elements, which are the consequence of dumping, put the Community industry into a disadvantageous position.

2. **Other factors**

(36) It appeared that whereas demand in the Community market increased between 1988 and 1990, imports of LAECs of countries other than Japan did not exceed one-third of that of the Japanese imports and their market share did not increase disproportionately. As to whether imports from third countries might have contributed to the unhealthy situation of the Community industry, no evidence has been brought forward in this respect and none of the exporters have claimed that these imports contributed to the injury suffered by the Community industry. The Commission also ntoes that, with the levels of injury sustained by the Community industry, even if the imports of third countries had caused injury to the industry, this would not detract from the fact that the injury caused by the Japanese dumped exports is material.

(37) Certain Japanese producers argued that the Community industry had been inflicting injury on itself by reason of its imports from Japan. The Commission has found in its investigation that none of these imports were resold in the market. Therefore the Commission has conclueded that these imports are not to be considered as 'self-inflicted' injury so that they do not constitute 'other factors' within the meaning of Article 4 (1) of the Basic Regulation.

In any case, the Commission noted that the volume of the LAECs imported by Philips consumer Electronics BV remained more or less stable between 1988 and 1990, whereas the volume of the rest of the Japanese imports rose very rapidly from 11,8 million units in 1988 to 19,9 million in 1990, thereby increasing their Community market share from 23,2 % in 1988 to 34,8 % in 1990. Undercutting margins analysis have also shown that the level of price undercutting of the imports of Philips Consumer electronics BV is much lower than the undercutting margins for the rest of the exporters.

Thus, even if the imports of Philips Consumer Electronics BV are not taken into account, the volume of the other dumped imports, the growth of their market share and the amount of the price undercutting are sufficient to demonstrate that material injury has been caused by the rest of the dumped imports.

(38) In these circumstances, the Commission has come to the conclusion, for the purpose of a provisional determination, that the dumped imports of Japanese origin have, taken in isolation, caused material injury to the Community industry.

G. COMMUNITY INTEREST

(39) The purpose of anti-dumping duties is to remedy unfair competition which injures Community industry. Such a remedy should result in the re-establishment of a fair competitive situation which, as such, is in the interest of the Community.

(40) In the present case, indeed, the Japanese companies sell below cost for export to the Community while making high profits on their domestic market and are found to be dumping. If the rapid price decrease of dumped imports from Japan is not corrected and if profitable price levels are not restored, the Community industry of LAECs will face a further deterioration in its already weakened position with the strong possibility of total shut-down. This would leave the Community without a high-technology industry and with a consequent loss of research, investment and employment, and a reduction in the number of suppliers, thus restricting future conditions of competition.

(41) Examination of facts has shown that the cost of a LAEC in the total cost of a finished consumer product rarely exceeds 1 %. While the Commission acknowledges, as explained above in recital (10), that the consumer electronic industry is highly competitive and thus every reduction in cost is important, it must be stressed that the lower prices being offered by the Japanese exporters to the user industry are the result of unfair trading practices which are injurious and detrimental to the Community manufacturing industry.

The impact on final consumers of duties being imposed on LAECs can be considered as negligible in view of the low proportional cost of capacitors in the total cost of the end product.

(42) In balancing all the interests involved, the Commission has taken special consideration of the fact that the Community industry might be forced to shut down if protection is not provided and the medium-term advantages for the user industry of being supplied at lower prices may then disappear.

(43) The Commission accordingly considers that it is in the Community interest to remove the effects of the injury caused to the Community industry by

the dumping that has been found. The overriding need to protect the viability and maintain the competitiveness of the industry is, to a large extent, consistent with the interests of consumers and offsets the disadvantages, which are in any event limited both in scale and in time.

H. DUTY

(44) Since the injury consists mainly of lack of profitability or losses, the removal of such injury requires that the Community industry should be put in a position in which its prices can be increased to a profitable level. In order to achieve this, export prices of the Japanese producers should be increased accordingly.

For calculating the necessary price increase, the Commission considered that prices of the dumped imports had to be compared with the cost of production of the Community producers investigated plus a profit margin of 12 %. This profit margin is based on the level of profit realized on average by Community producers prior to the deterioration of their profitability as a result of the dumped imports. The Commission considers this profit margin is the minimum required to ensure the viability of the Community industry concerned. This profit margin is well below the weighted average profit realized by the Japanese exporters on their sales in their domestic market.

(45) On this basis, the weighted average export prices for each model, as used for establishing undercutting, were compared during the investigation period, with the weighted average cost of production of the Community producers investigated, for the corresponding product type, plus a 12 % profit margin.

(46) Using this method, the differences expressed on a cif Community frontier basis, calculated for the companies which cooperated with the Commission's investigation, varied according to the exporter concerned from 83,6 % to 129,9 %.

In this respect it is worth noting that, if imports by Philips Consumer Electronics BV were not taken into account, those differences would be significantly higher.

(47) The individual differences calculated for each exporter exceed the dumping margins found. Consequently, the duty to be imposed for these exporters should correspond to these dumping margins (see recital (22)).

As far as the non-cooperating companies are concerned, the Commission considerd that the most appropriate facts available, as provided for in Article 7 (7) (b) of the basic Regulation, would be those based on the investigation and therefore considered that the highest injury-threshold ofthe cooperating exporters should be used. As the dumping-margin determined for non-cooperating exporters (see recital (24)) is lower than that injury threshold, the duty should be imposed at the level of the dumping margin established.

I. FINAL PROVISION

(48) In the interest of sound administration, a period should be fixed within which the parties concerned may make their views known in writing and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of large electrical capacitors, aluminium electrolytic, with a CV product (capacitance multiplied by rated voltage) between 18 000 and 310 000 µC (microcoulombs), at a voltage of 160 V or more and with a diameter of 19 mm or more and at a length of 20 mm or more, originating in Japan and falling within CN code ex 8532 22 00 (Taric codes : 85 32 22 00*11 and 8522 00*91).

2. The rate of duty shall be 75 % expressed as a percentage of the net free-at-Community-frontier price before duty (Taric additional code 8665), except when manufactured by the following companies for which the rate of duty expressed as a percentage of the net free-at-Community-frontier price before duty is set out below :

	Rate of duty	Taric additional code
Elna Co. Ltd, Fujisawa City Kanagawa	35,8 %	(8661)
Nichicon Corporation, Kyoto	20,1 %	(8662)
Nippon Chemi-con Corporation, Tokyo	14,1 %	(8663)
Rubycon Corporation, Ina Nagano	43,1 %	(8664)

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) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within one month from the date of 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 13 of Regulation (EEC) No 2423/88, 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, 2 June 1992.

For the Commission

Frans ANDRIESSEN

Vice-President