COUNCIL REGULATION (EEC) No 2849/92

of 28 September 1992

modifying the definitive anti-dumping duty on imports of ball bearings with a greatest external diameter exceeding 30 mm originating in Japan imposed by Regulation (EEC) No 1739/85

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 Articles 14 and 15 thereof,

Having regard to the proposal submitted by the Commission after consultations within the Advisory Committee as provided for under the above Regulation,

Whereas,

A. PROCEDURE

(1) In May 1989 the Commission announced, by a notice published in the *Official Journal of the European Communities* [2], the initiation of a review of anti-dumping measures in accordance with Article 14 of Regulation (EEC) No 2423/88, concerning imports of ball bearings with a greatest external diameter exceeding 30 mm originating in Japan and commenced an investigation. The measures in question consisted of definitive duties on imports of the product concerned imposed by Council Regulation (EEC) No 1739/85 [3].

(2) The investigation was initiated as a result of a request lodged in December 1988 by the Federation of European Bearings Manufacturers Associations (Febma). The request alleged changed circumstances since the imposition of the definitive anti-dumping duty. The evidence contained in this request was considered sufficient to justify opening an investigation.

(3) As the investigation was still in progress at the end of the relevant five-year period, the Commission, in accordance with Article 15 (4) of Regulation (EEC) No 2423/88 gave notice [4] that the measures imposed would remain in force pending the outcome of the review.

(4) The Commission officially advised the manufacturers and importers known to be concerned and the representatives of the exporting country and the complainant in the review. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(5) Several manufacturers and exporters and Febma made their views known in writing and were granted a hearing.

(6) The Commission sought and verified all information it deemed necessary for the purposes of this proceeding and carried out investigations at the premises of the following companies:

Community producers:

— FAG Cuscinetti SpA, Turin,
— FAG Kugelfischer Georg Schäfer KGaA, Schweinfurt,
— GMN Georg Müller Nürnberg AG, Nuremburg,
— RHP Bearings Ltd, Newark (taken over by Nippon Seiko Co Ltd),
— Rol Rolamentos Portugueses sàrl, Caldas da Rainha,
— SKF Deutschland GmbH, Schweinfurt,
— SKF France SA, Clamart,
— SKF Industrie SpA, Turin,
— SKF (UK) Ltd, Luton,
— Sociedade SKF LdA, Lisbon.

Japanese manufacturers:

— Fujino Iron Works Co Ltd, Osaka,
— Inoue Jikuuke Kogyo Co Ltd, Osaka,
— Izumoto Seiko Co Ltd, Osaka,
— Koyo Seiko Ltd, Osaka,
— Maekawa Bearing Co Ltd, Osaka,
— Matsuo Bearing Co Ltd, Osaka,
— Nachi Fujikoshi Corporation, Tokyo,
— Nankai Seiko Co Ltd, Osaka,
— Nippon Seiko Co Ltd, Tokyo,
— NTN Corporation, Osaka (formerly NTN Tokyo Bearing Co Ltd, Osaka),
— Sapporo Precision Inc, Sapporo,
— Wada Seiko Co Ltd, Osaka.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 133, 30. 5. 1989, p. 3.
[3] OJ No L 167, 27. 6. 1985, p. 3.
[4] OJ No C 132, 31. 5. 1990, p. 5.

During the investigation it was established that Inoue Jikuuke Kogyo Co Ltd is related to Nippon Seiko Co Ltd.

Importers in the Community:

— Deutsche Koyo Wälzlager Verkaufs GmbH, Hamburg,
— Koyo Española SA, Madrid,
— Koyo France SA, Argenteuil,
— Koyo (UK) Ltd, Milton Keynes,
— Nachi (Germany) GmbH, Neuss,
— Nachi Industrial SA, Salamanca,
— Nachi (UK) Ltd, Birmingham,
— NSK Bearings Europe Ltd, Edgware,
— NSK France SA, Voisins-les-Brettoneux,
— NSK Kugellager GmbH, Ratingen,
— NTN Bearings (UK) Ltd, Burntwood,
— NTN France SA, Schweighouse-sur-Moder,
— NTN Wälzlager (Europa) GmbH, Erkrath.

(7) The investigation of dumping covered the period 1 April 1988 to 31 March 1989 (the investigation period).

(8) This investigation has exceeded the normal time period because of the volume and complexity of the data which had to be gathered and examined, and because the completion of the investigation has required the examination of new issues which arose during the proceeding and which could not have been foreseen at its outset.

B. PRODUCT UNDER CONSIDERATION/LIKE PRODUCT

(9) The products concerned are all types of ball bearings with a greatest external diameter exceeding 30 mm as in the original investigation.

(10) These ball bearings have the same physical characteristics and uses and are alike in all respects to those produced by the Community industry and to those sold on the Japanese domestic market.

C. DUMPING

1. General

(11) In view of the many different types of bearings concerned which exist, dumping calculations were based on those types which are most important in terms of the export volume (to the Community) of each separate manufacturer.

(12) For each Japanese manufacturer the types selected represent by quantity at least 70 % of that company's exports of the product concerned to the Community during the investigation period and could thus be considered representative.

2. Normal value

(13) Normal value was established on the basis of the weighted average net domestic sales price to the first independent customer in Japan for each type of bearing under consideration when :

— the weighted average domestic net sales price for that type (when loss-making transactions accounted for only a small proportion of all transactions) exceeded the cost of production including selling, general and administrative expenses (SGA), and

— the volume of domestic sales was equivalent to at least 5 % of the export volume to the Community of the types in question.

(14) In the limited number of cases where the domestic sales of a particular type were less than 5 % of the quantity exported to the Community, the domestic selling price of the manufacturer concerned of a type closely resembling the exported type was taken, in accordance with Article 2 (3) (a) of Regulation (EEC) No 2423/88.

(15) In cases where there were no types closely resembling the exported types or where the domestic sales of the types sold for export to the Community had a domestic weighted average net sales price below cost of production plus SGA, cost of production plus SGA plus a profit realized by the manufacturer on its profitable sales of the like product on the domestic market has been taken as a basis for calculating normal value in accordance with Article 2 (3) (b) of Regulation (EEC) No 2423/88. The Council confirms these calculations of the Commission as appropriate.

3. Export price

(16) In the case of sales made directly to independent customers in the Community, export prices were established on the basis of the prices paid or payable to the exporter.

(17) Where exports were made to importers in the Community related to the Japanese manufacturers, export prices were reconstructed on the basis of resale prices to the first independent buyer in the Community, with allowances being made in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88.

Based on the Commission findings for the trade sector concerned, 6 % on the turnover was taken as a reasonable profit for the related importers.

(18) The constructed export prices were based on the resale prices in the United Kingdom, Germany and France. These three major markets were considered representative for this proceeding as they comprise more than 70 % of total Japanese exports to the Community.

The Council confirms these findings.

4. Comparison

(19) In order to make a fair comparison, normal value and export price (calculated at ex-factory level) of the types concerned were compared at the same level of trade.

(20) In addition, the Commission took account of factors affecting price comparability when so requested by the interested parties.

In this respect, allowances were made as regards differences relating to transport, insurance, handling and loading costs and to ancillary costs, conditions of payment, warranties, wages and commission paid to sales personnel. No allowances were made in respect of differences in physical characteristics as these were considered not to have any effect on price comparability. The Council confirms these findings of the Commission.

5. Dumping margins

(21) The dumping margins were calculated as being the total amount by which normal values exceeded ex-factory export prices of the types selected. Conversion to a percentage figure was made by dividing this amount over the total cif export value of all types taken into consideration.

(22) The margins of dumping established were as follows :

Fujino Iron Works Co Ltd, Osaka :	0,0 %,
Inoue Jikuuke Kogyo Co Ltd, Osaka :	25,3 %,
Izumoto Seiko Co Ltd, Osaka :	0,0 %,
Koyo Seiko Ltd, Osaka :	42,2 %,
Maekawa Bearing Co Ltd, Osaka :	0,0 %,
Matsuo Bearing Co Ltd, Osaka :	0,0 %,
Nachi Fujikoshi Corporation, Tokyo :	44,6 %,
Nankai Seiko Co Ltd, Osaka :	0,0 %,
Nippon Seiko Co Ltd, Tokyo :	25,3 %,
NTN Corporation, Osaka : (formerly NTN Toyo Bearing Co Ltd, Osaka) :	50,6 %,
Sapporo Precision Inc., Sapporo :	0,0 %,
Wada Seiko Co Ltd, Osaka :	0,0 %.

Since during the investigation it was established that Inoue Jikuuke Kogyo Co Ltd is related to Nippon Seiko Co Ltd, it was considered appropriate to establish a dumping margin for these companies on a weighted average base i. e. 25,3 %.

(23) For those manufacturers which did not reply to the Commission's questionnaire, or sent an incomplete reply, or failed to make themselves known, the Council confirms that dumping was determined on the basis of the facts available in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88.

Since the cooperating manufacturers comprised the vast majority of all exporters to the Community, the Commission considered and the Council confirms that the result of its investigation concerning other manufacturers provided the most appropriate basis for determination of the margin of dumping.

It would constitute a bonus for non-cooperation to assume that the dumping margin for these manufacturers was any lower than the highest dumping margins determined for those producers who had cooperated in the investigation.

D. SITUATION OF THE COMMUNITY INDUSTRY

1. Definition of Community industry

(24) For the purposes of the investigation, some companies having production facilities in the Community have not been considered as forming part of the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88, since they are wholly or majority-owned subsidiaries of the Japanese exporters for which substantial dumping was found. Indeed, these subsidiaries benefit from the dumping of their parent companies.

(25) Since there are pratically no other production facilities in the Community, except the complainants, the latter have to be considered as constituting the Community industry in accordance with Article 4 (5) of Regulation (EEC) No 2423/88. The companies which cooperated with the Commission's injury investigation account for the quasi-totality of the so-defined Community industry's output of the like product during the investigation period.

2. Imports from Japan and the situation of the Community industry

(26) When examining the effects of Japanese imports into the Community, it has to be borne in mind that measures were already in force which should normally have eliminated the injurious effects of dumping.

Therefore, it has only to be examined whether the situation of the Community industry is such that the expiry of the measures would again lead to injury.

(27) The total volume of dumped imports by Japanese manufacturers into the Community shows an increase of 2,7 % between 1986 and the end of the investigation period.

(28) Although prices of Japanese dumped imports have increased and Community industry prices have fallen, there is still a certain amount of price undercutting by Japanese imports when comparing weighted average prices for each type of bearing of the Japanese exporters with the prices of identical bearing types produced by Community industry or types closely resembling them.

(29) Community production remained relatively stable between 1986 and the end of the investigation period.

(30) The total value of the Community industry sales increased by 12,5 % between 1986 and the end of the investigation period. This increase however is less than the total growth in the market.

(31) In terms of value, the market share of the Community industry based on sales of bearings produced by the bearing industry in the Community between 1986 and the end of the investigation period decreased from 75,1 to 72,9 %.

(32) An examination of the above indicators leads the Council to conclude that although the measures in force had a certain effect, the Community industry is still in a relatively weak position.

E. POSSIBLE EFFECTS OF EXPIRY OF THE MEASURES

(33) Given this precarious situation, the Council is of the opinion that the expiry of the measures would worsen this situation.

(34) Indeed, without measures, it has to be expected that the undercutting by Japanese imports would increase and the Community industry would suffer reduced profitability and further losses in market share, since the Community industry will be unable to resist this additional market pressure.

(35) In this respect, the Council notes further that at present the market is in a recession. The Community bearings industry has therefore become much more vulnerable particularly as the market is getting tighter and sales quantities and prices come under increasing pressure. Low-priced dumped imports would even aggravate this precarious situation.

(36) In addition, it has to be borne in mind that Japanese exports to the United States are facing high anti-dumping duties. If measures imposed on their imports into the Community are removed, import volumes are likely to increase, possibly even at lower prices if undercutting persists.

(37) Finally, since the Japanese producers have expanded their production capacity in Japan, while consumption in the Community has not increased, it can be assumed that, without measures in force, there will be increased Japanese export sales to the Community. In contrast, the Community producers did not expand their production facilities in the Community.

(38) In view of the above factors, it can be clearly foreseen that the Community industry will suffer material injury from the dumped imports in the event of the expiry of the anti-dumping measures.

(39) The Council therefore concludes that removing the existing anti-dumping measures would lead to a recurrence of material injury.

F. COMMUNITY INTEREST

(40) In general, it is in the Community interest for there to be fair and workable competition and the purpose of continuing to take measures in this case is the maintenance of a situation of fair trade. In considering the Community interest, the Council confirms that the Commission has taken account

of the interest of the Community ball bearings industry, the users of ball bearings and as well the final consumers of the end of product.

(41) In view of the above analysis, the removal of measures would lead to negative consequences for the Community industry producing the ball bearings concerned and endanger its viability. The further weakening of this industry would have serious consequences for employment, the increase of new investment and further research and development expenditure in other high technology areas such as electronic products.

(42) The Council considers therefore that it is in the interest of the Community that such consequences do not occur.

(43) As far as the purchasers of ball bearings (and implicitly the final consumers of their products) are concerned, it can be argued that some short-term benefit could be derived from buying dumped low-priced bearings.

Any such benefit, however, would be minimal, since the bearings concerned account for only a small proportion of the final price of most end-products.

Even though the effect on the industrial purchaser (and ultimately the end-user) would be negligible, the benefit provided by anti-dumping measures for bearing manufacturers is considerable.

This is also shown by the fact that no Community user of ball bearings has reacted to the proceeding.

(44) The Council confirms, therefore, that on balance the interest of the Community clearly lies in maintaining protection for its ball bearings industry against unfair competition caused by imports at dumped prices.

G. PROPOSED MEASURES

(45) In view of all the above factors it is proposed to maintain protective measures in force.

(46) In order to determine the level of the duty required to prevent the recurrence of injurious effects of dumped imports, the Commission, as confirmed by the Council, took account of the level of profit shortfall of the Community industry and the level of price undercutting, duly adjusted to cif level during the investigation period for each Japanese exporter individually. Measures to be taken should cause the prices of exporters to increase by an amount which allows the Community industry to reach a reasonable profit level and to eliminate each exporter's price undercutting.

(47) As far as the profit necessary for the Community industry is concerned, the industry itself considered a net profit before tax of around 15 % to be the necessary minimum required.

In view of it being an established industry and of the profit level achieved historically, this is not considered appropriate. The Council confirms the Commission's view, therefore, that a net profit rate of 8 % before tax should be taken as a basis for assessing the target price of the industry during the investigation period.

(48) It was considered that price increases for Japanese exporters which would prevent the recurrence of injury, should be sufficient to allow the Community industry to increase its prices to this target price level. In this respect, the individual average prices of the products concerned of each Japanese exporter were compared to this target price. The difference, expressed as a percentage of the cif value, is the individual price increase for each Japanese exporter necessary to prevent further injury.

(49) On this basis the Council confirms the Commission's conclusion to apply the following anti-dumping duty rates, expressed as a percentage of cif value, before customs duty:

Inoue Jikuuke Kogyo Co Ltd, Osaka:	6,5 %,
Koyo Seiko Co Ltd, Osaka:	13,7 %,
Nachi Fujikoshi Corporation, Tokyo:	7,7 %,
Nippon Seiko Co Ltd, Tokyo:	6,5 %,
NTN Corporation, Osaka (formerly NTN Toyo Bearing Co Ltd, Osaka):	11,6 %.

(50) Since the other Japanese companies participating in this case were found not to be dumping, no anti-dumping duty will apply to the exports of these companies.

(51) The anti-dumping duty rate for ball bearings with a greatest external diameter exceeding 30 mm originating in Japan and manufactured by companies not listed under recital 22 above should be fixed on the basis of the facts available. Given that the imports of the companies listed account for a high proportion of all imports into the Community of ball bearings originating in Japan, the Council considers that the result of the investigation forms the most appropriate basis. Thus, the level of the duty to be applied on exports of all other Japanese manufacturers should be 13,7 %.

(52) Since there is a danger of the payment conditions of exporters being altered in order to avoid the duty imposed, the Council considers it appropriate to require that free-at-Community frontier prices be regarded as net if the terms of sale provide for payment within 90 days of consignment,

HAS ADOPTED THIS REGULATION:

Article 1

The definitive duties imposed by Article 1 of Regulation (EEC) No 1739/85 on the products defined below are hereby modified in accordance with the following provisions:

1. a definitive anti-dumping duty is hereby imposed on imports of ball bearings with a greatest external diameter exceeding 30 mm falling within CN code 8482 10 90 and originating in Japan;

2. the anti-dumping duty, expressed as a percentage of the net, free at Community frontier price of the product before duty shall be 13,7 % (Taric additional code 8677) except when manufactured by the following companies for which the rate of anti-dumping duty is set out below:

Inoue Jikuuke Kogyo Co Ltd, Osaka (Taric additional code 8673),	6,5 %,
Nachi Fujikoshi Corporation, Tokyo (Taric additional code 8674),	7,7 %,
Nippon Seiko Co Ltd, Tokyo (Taric additional code 8673),	6,5 %,
NTN Corporation, Osaka (formerly NTN Toyo Bearing Co Ltd), (Taric additional code 8675),	11,6 %;

3. no anti-dumping duties shall apply to ball bearings with a greatest external diameter exceeding 30 mm manufactured by:
   - Fujino Iron Works Co Ltd, Osaka (Taric additional code 8676),
   - Izumoto Seiko Co Ltd, Osaka (Taric additional code 8676),
   - Maekawa Bearing Co Ltd, Osaka (Taric additional code 8676),
   - Matsuo Bearing Co Ltd, Osaka (Taric additional code 8676),
   - Nankai Seiko Co Ltd, Osaka (Taric additional code 8676),
   - Sapporo Precision Inc., Sapporo (Taric additional code 8676),
   - Wada Seiko Co Ltd, Osaka (Taric additional code 8676);

4. free-at-Community-frontier prices shall be net if the terms of sale provide for payment within 90 days of consignment.

   They shall be increased or reduced by 1 % for each month's increase or decrease in the period of payment;

5. the provisions in force concerning customs duties shall apply.

Article 2

This Regulation shall enter into force on the day following 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, 28 September 1992.

For the Council

The President

N. LAMONT