I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3482/92

of 30 November 1992

imposing a definitive anti-dumping duty on imports of certain large electrolytic aluminium capacitors originating in Japan and collecting definitively the provisional anti-dumping duty

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 MEASURES

(1) The Commission, by Regulation (EEC) No 1451/92 [2] (hereafter referred to as the Provisional Duty Regulation) imposed a provisional anti-dumping duty on imports of certain large electrolytic aluminium capacitors 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'). The Council, by Regulation (EEC) No 2848/92 [3] extended this duty for a period not exceeding two months.

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping duty, the interested parties, who so requested, 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 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 to make representations subsequent to the disclosure.

(4) The oral and written comments submitted by the parties were considered and, where appropriate, the Commission's findings were modified to take account of them.

(5) One exporting producer cooperated in the first part of the proceeding but failed, after the imposition of provisional duties, to reply to a certain number of requests for information addressed by the Commission concerning export transactions and informed the Commission that he would no longer participate in the investigation. This exporter, when informed by the Commission that final findings might be made on the basis of facts available, confirmed that it would not further participate in the investigation.

This lack of information precluded the Commission from determining, for the purpose of definitive findings, the total number of export transactions and the price of a number of these transactions.

In these circumstances the Commission concluded that it did not have the necessary reliable information available to establish individual conclusions concerning dumping and injury for this exporter. Accordingly, the findings for this exporter were based on the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88.

The Council confirms this conclusion.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 152, 4. 6. 1992, p. 22.
(3) OJ No L 286, 1. 10. 1992, p. 1.

(6) Due to the complexity of the proceeding, in particular to the detailed verification of the voluminous data involved and the numerous arguments put forward, the investigation could not be concluded within the normal time limit.

C. COMMUNITY INDUSTRY

(7) The Commission found in recitals 8 to 12 of the Provisional Duty Regulation that the three producers supporting the complaint satisfied the requirements to be regarded as the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88 and particularly that no reasonable grounds existed to exclude Nederlandse Philips Bedrijven BV from the Community industry.

(8) One of the cooperating exporters disputed the Commission's conclusions on the definition of the Community industry. Its arguments were the following:

(i) Philips was itself, through one of its companies i.e. Philips Consumer Electronics BV, an importer of the dumped products;

(ii) the price advantages obtained as a result of the purchases of LAEC's in Japan by Philips Consumer Electronics BV must have outweighed the corresponding losses of Nederlandse Philips Bedrijven BV, the LAEC's manufacturing division. Thus, Philips as a whole, had benefitted from dumping and should, consequently, be excluded from the Community industry.

As to these arguments, the Commission recalls its previous general practice to exclude importing Community producers only when they are either shielded from the effect of the dumped imports, draw undue benefits from them or import such quantities in relation to their own production that they cannot be considered any longer as being committed to production in the Community.

Indeed, to include such companies in the injury findings would distort aggregate data bearing on the constitution of the Community industry.

(9) In the light of the above considerations, the Commission has examined whether the imports by Philips Consumer Electronics BV are such as to justify the exclusion of the whole Philips group from the scope of the Community industry. In this respect, the Commission first examined, whether Philips was shielded from or benefitted through the effects of dumping and has concluded, as is shown in recitals 21 and 23 of this Regulation, that Philips Bedrijven BV suffered material injury through the effects of dumping and was therefore, not shielded from the unfair business practices.

The Commission has further found that whatever the advantages obtained by Philips Consumer Electronics BV, these have not offset the disadvantages suffered by Nederlandse Philips Bedrijven BV. In addition to the lost sales to Philips Consumer Electronics BV, the former was indeed not able to benefit from economies of scales and could not make the necessary investments and research and development expenses. It is for these reasons precisely, that Philips has supported the anti-dumping complaint in order to put an end to the injurious dumping practices, an action which Philips would not have taken if the advantages obtained by Philips Consumer Electronics BV had outweighed the damages suffered by Nederlandse Philips Bedrijven BV.

As to the commitment of Philips to continue producing in the Community, the quantities imported by Philips Consumer Electronics BV were small in relation to the production output of Nederlandse Philips Bedrijven BV. In addition, none of the findings in recital 10 of the Provisional Duty Regulation have been contested by any of the parties involved.

(10) These circumstances are considered sufficient by the Commission, in exercising the responsibility for assessing whether certain producers with links to exporters or importers or who are themselves importers of the dumped products should be excluded from the Community industry, to confirm its decision that Nederlandse Philips Bedrijven BV should not be excluded from the Community industry.

For all these reasons the Council confirms the considerations and findings of recitals 9 to 12 of the Provisional Duty Regulation and considers that no reasonable grounds exist to exclude Nederlandse Philips Bedrijven BV from the Community industry.

D. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT

(11) The Commission in recitals 13 to 15 of the Provisional Duty Regulation defined the products forming the subject of the proceeding and concluded that the LAEC's produced and sold by the Community producers formed one single category of product and constituted a like product to the product imported from Japan.

(12) One of the exporters, without objecting to the like product determination of the Commission, claimed that separate injury findings should have been made in respect of DIN type and snap-in type capacitors. This exporter considered that the lack of separation between these two categories prevented a proper assessment of the relationship of its exports, which are mainly of the snap-in type, with the market data put forward by the complainant.

The Commission considers that, insofar as both the snap-in and the DIN type capacitors have been considered like products and are interchangeable in their uses, there is no justification to split the injury findings into two categories, in particular as the exporter making this request did not introduce any arguments or evidence leading to indicate that these two categories cannot be considered as like products. The Community industry manufactures both DIN and snap-in capacitors in a proportion estimated to be of 30 % for DIN types and 70 % for snap-in types while the Japanese exporters export almost exclusively snap-in types. The exporter making this claim has admitted that snap-in capacitors are replacing DIN type capacitors in the Community. This implies that these products are directly competing and therefore that any depression of the prices of the snap-in capacitors inevitably has an effect on the prices of the DIN type capacitors.

All these factual elements lead the Commission to consider that the request of the exporter is not justified.

The Council confirms this conclusion and the findings of the Commission in recitals 13 to 15 of the Provisional Duty Regulation.

E. DUMPING

1. Normal value

(13) No comments from any of the interested parties were received concerning the manner in which normal values had been calculated for purposes of provisional determinations in recitals 16 and 17 of the Provisional Duty Regulation.

For one of the exporters investigated, the Commission observed that a material error had taken place in the calculation of its sales, general and administrative expenses. These were modified and the normal values for the exporter concerned were modified accordingly. The exporter concerned did not object to this course of action.

2. Export price

(14) No comments from any of the interested parties were received concerning the manner in which export prices had been determined for the purpose of the preliminary findings in recital 18 of the Provisional Duty Regulation.

The Council confirms the findings of the Commission.

3. Comparison

(15) None of the parties concerned objected to the Commission's method of comparison between normal values and export prices nor to the decisions of the Commission concerning allowances as set out in recitals 19 to 21 of the Provisional Duty Regulation.

The Council confirms these findings.

4. Dumping margins

(16) Normal values and export prices were compared on a transaction by transaction basis. The final examination of facts shows the existence of dumping in respect of LAECs originating in Japan, the margin of dumping being equal to the amount by which the normal value exceeds the price for export to the Community.

(17) One of the exporters contested the way in which the Commission had calculated the dumping margins by taking only the best selling models of those exported to the Community. The Commission notes that the models selected account for more than 70 % of total export transactions and that it has been standard practice of the institutions in a number of cases where the large number of transactions so required, to consider a significant quantity such as 70 % of the export transactions, in application of Article 2 (13) of Regulation (EEC) No 2423/88, as being representative. the Commission also notes that this exporter had requested to the Commission to limit the number of domestic transactions being reported during the investigation in view of their extremely large number.

In these circumstances the Commission considers that the use of sampling techniques is well justified in the present case.

The Council confirms these conclusions.

(18) For purposes of definitive findings the Commission took account of new information available concerning the total value of the sales to the Community of the cooperating exporters and the dumping margins were modified accordingly.

(19) The weighted average margins of dumping for each exporter, expressed as a percentage of the total cif value are as follows :

— Eina Co. Ltd.	35,8 %
— Nippon Chemi-con Corporation	11,6 %
— Rubycon Corporation	30,1 %.

(20) As far as the other non-cooperating exporters are concerned, no comments on the conclusions in recitals 23 and 24 of the Provisional Duty Regulation were received by the Commission with the exception of the request received from one exporter to reply to the questionnaire well after the time limit set in the Notice of initiation and shortly before the publication of the Provisional Duty Regulation. This request could not be accepted as the company concerned failed to respect any of the procedural rules applicable to anti-dumping proceedings.

In these circumstances the Council confirms the conclusions as set out in recitals 23 and 24 of the Provisional Duty Regulation. The dumping margin determined for non-cooperating exporters is 75 %.

F. INJURY

(21) The Commission found in recital 33 of the Provisional Duty Regulation, that the Community industry had suffered material injury, within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88, mainly in the form of loss of profitability and loss of market share.

(22) One of the exporters requested that a specific type of capacitor being sold to a client in Italy should be excluded from the scope of the proceeding as, it argued, its sales could not have caused injury to the Community industry. The claim was based on the allegation that this product was being sold at a price higher than that offered by a Community producer and that, being sold in only one Member State it could not cause injury to the Community industry in the rest of the Community. The Commission notes in respect of this request that the consideration of this specific type of capacitors as a like product has not been disputed and that it has been the consistent practice of the Commission and the Council to establish the existence of injury to the industry concerned by assessing the combined effect of all dumped imports of the product concerned into the Community without examining the impact of a particular type of product or a particular transaction.

The Commission cannot therefore accept the request of the exporter.

The Council confirms this conclusion.

(23) No other comments from the interested parties were received concerning the conclusions of the Commission on injury as set out in recitals 25 to 33 of the Provisional Duty Regulation.

These conclusions are confirmed by Council.

G. CAUSALITY

(24) The Commission noted in recital 34 of the Provisional Duty Regulation that the increase in volume and market share of the dumped imports coincided with the deterioration of the situation of the Community industry. The Commission examined whether other factors might have been the cause of the injury to the Community industry and concluded in recital 38 that the dumped imports of Japanese origin had, taken in isolation, caused material injury to the Community industry.

(25) It was argued by one of the exporters that the problems being faced by the Community producers were not the result of the exports originated in Japan but rather of the fact that the Community producers were less cost efficient than the Japanese exporters and that the products put on the market by the Community producers were overspecified in relation to the requirements of the market.

Without examining the issue whether the Japanese exporters actually enjoy some cost advantages it must be stressed that the Community industry, as explained in recital 35 of the Provisional Duty Regulation, has not been able to make use of its extended capacity and to benefit from the economies of scale due to the very substantial price undercutting of the Japanese imports. The Commission considers that, in any case, with such substantial undercutting of prices, which is higher than any presumed cost advantage, these presumed cost advantages are irrelevant.

Moreover, the Commission notes that the exporters concerned by this proceeding consistently sold in the Community below their cost of production is indicated in recitals 26 and 40 of the Provisional Duty Regulation. In these circumstances the Commission considers that, irrespective of the existence of cost advantages even if these were accepted, this flagrant dumping of the exporters causes injury to the Community industry.

It was further argued in particular that Community producers were selling overspecified DIN and snap-in capacitors. The results of the investigation have shown however, that Community producers manufacture these products in accordance with the specifications requested by their customers. The argument cannot, therefore, be considered as substantiated and the allegations of this exporter cannot be accepted.

(26) No other arguments concerning the findings of the Commission on the causation of injury set out in recitals 34 to 38 of the Provisional Duty Regulation have been made. The Commission ratifies these findings.

The Council confirms these conclusions.

H. COMMUNITY INTEREST

(27) In its provisional findings the Commission considered the interest of the Community manufacturing industry, of the user industry and of the final consumers and came to the conclusion in recital 43 of the Provisional Duty Regulation that it was in the interest of the Community to remove the effects of the injury caused to the Community industry by the dumping found.

(28) The Commission has further examined the impact that the proposed duties might have on users of capacitors in the Community. For a popular consumer product, the cost of the LAEC incorporated into one unit accounts for approximately 1,7 % of the cost of the material content, or for approximately 1 % of the ex factory price, including labour, overheads and profit. The impact of a 75 % duty on the material content cost will be an increase of 1,275 % while at the ex factory level the result will be an increase of that price by 0,75 %. The impact of the duty on final consumers will be even less and may therefore be considered as negligible.

(29) Although the Commission recognizes, as indicated in recital 40 of the Provisional Duty Regulation, that every reduction in cost is important for the consumer electronics industry, the Commission must balance all interests involved when considering whether the interest of the Community requires the imposition of measures. In this particular case the Community industry, in view of the consistent under cost pricing of the exporters, might be forced to shut down if fair conditions of trade are not restored and, in such circumstances, the present advantages to the user industry of being supplied at lower prices may disappear.

In these circumstances the Commission considers that the interest of the Community calls for the re-establishment of a fair competitive situation and that any disadvantage which might result are in any event, limited both in scale and in time.

The Council confirms these conclusions.

I. DUTY

(30) In establishing the level of the definitive duties to be imposed the Council confirms the Commission's methodology and findings outlined in recitals 44 to 47 of the Provisional Duty Regulation with regard to imports from cooperating exporters and from exporters which did not reply to the Commission's questionnaire within the established time limit.

No arguments from any interested parties were received by the Commission concerning these findings.

(31) As to the exporter referred to in recital 5 of this Regulation the Commission has concluded that in view of the impossibility of determining its export prices, definitive findings in respect of the level of duty should be made on the basis of the facts available in accordance with Article 7 (7) of Regulation (EEC) No 2423/88 as for the other non-cooperationg exporters. The facts available taken into consideration for the determination of the duty are those referred to in recitals 24 and 47 of the Provisional Duty Regulation.

The Council confirms these conclusions.

J. UNDERTAKINGS

(32) Several exporters offered price undertakings to the Commission. The Commission examined the offers and considered that in view of the wide variety of different types of LAECs and the rapid technology developments, efficient monitoring of the adherence of the exporters to the terms of the undertaking would not be practicable.

In these circumstances the Commission considers that the undertakings cannot be accepted. The exporters have been informed accordingly.

The Council confirms this conclusion.

K. COLLECTION OF PROVISIONAL DUTIES

(33) In view of the dumping margins established and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts secured by way of provisional anti-dumping duties should be definitively collected to the extent of the amount of the duty definitively imposed, and for those exporters for which the definitive duty is higher than the provisional duty to the extent of the amount of the provisional duty imposed,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive 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 8532 22 00 * 11 and 8532 22 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 shall be as set out below :

	Rate of duty	*Taric additional code*
— Eina Co. Ltd, Fujisawa City, Kanagawa	35,8 %	(8661)
— Nippon Chemi-con Corporation, Tokyo	11,6 %	(8663)
— Rubycon Corporation, Ina Nagano	30,1 %	(8664).

Article 2

The amounts secured by way of provisional anti-dumping duty imposed by Regulation (EEC) No 1451/92 shall be definitively collected at the rates of duty definitively imposed in the case of Nippon Chemi-Con Corporation and of Rubycon Corporation and at the rates of provisional duty applicable in all other cases.

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, 30 November 1992.

For the Council

The President

T. EGGAR