COUNCIL REGULATION (EEC) No 55/93

of 8 January 1993

imposing a definitive anti-dumping duty on imports of outer rings of tapered roller bearings 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 for 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 1994/92 (2), imposed a provisional anti-dumping duty on imports into the Community of outer rings of tapered roller bearings originating in Japan (hereinafter referred to as 'TRB cups' unless otherwise specified) and falling within CN code ex 8482 99 00 (Taric codes 8482 99 00*11 and 8482 99 00*91). Council Regulation (EEC) No 3263/92 (3) extended the 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. Certain of these parties also made written submissions making known their views on the findings.

(3) Parties were informed in writing 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 provisional duty. They were also granted a reasonable 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 findings were modified to take account of them.

C. Product under consideration, like product

(5) The investigation which led to the imposition of provisional measures was based on data relating to finished TRB cups, that is to say products which are ready for immediate use without further processing. In this respect, one Japanese exporter argued that imports of TRB cups which are only cut to shape (turned) and require substantial further processing (i.e. heat treatment, grinding and honing) before they can be used commercially, should be excluded from the scope of the proceeding.

(6) In this regard, the Commission found that these unfinished TRB cups are rough products and have significantly different physical characteristics to those of finished TRB cups which are further processed and have high precision specifications and dimensions. Moreover, this further processing involves very high relative costs which mean that considerable value is added to the unfinished TRB cup. A clear distinction can therefore be made between unfinished and finished TRB cups. In addition, the unifnished TRB cups are destined exclusively for further processing while finished TRB cups are incorporated into tapered roller bearings. For these reasons, the Commission considers that unfinished TRB cups cannot be considered to be a product which is alike in all respects to the product under consideration and therefore should, in accordance with Article 2 (12) of Regulation (EEC) No 2423/88 be excluded from the scope of the proceeding.

(7) The Japanese exporters concerned have also argued that finished TRB cups are not a separate product with regard to the complete tapered roller bearings (hereafter referred to as 'TRBs'). In this regard, the Commission again took account of the relationship between TRB cups and TRBs and whether substantial further processing and components have to be added to TRB cups in order to transform them into

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 199, 18. 7. 1992, p. 8.
(3) OJ No L 326, 12. 11. 1992, p. 1.

TRBs. Since a TRB has considerable value added in comparison to a TRB cup (the latter only accounting for approximately 33 % of the value of the finished TRB) and comprises several more parts than the TRB cup, the Commission considers that TRB cups and TRBs form two different products for the purposes of this proceeding. In addition, TRB cups can be invoiced and sold separately from TRBs by the economic operators both in the exporting country and the Community.

(8) Accordingly, for the purposes of this proceeding, the products concerned are defined as 'outer rings of tapered roller bearings, further worked than turned'.

(9) The Council confirms these findings concerning the product under consideration.

D. Dumping

1. *Normal value*

(10) With regard to normal value, following publication of the provisional measures and the subsequent disclosure of the Commission's dumping calculations, one Japanese exporter showed that certain TRB cup types had in fact been sold in sufficient quantities domestically for the sales price of such types to be considered as the basis for normal value (as opposed to the cost of production being used). The Commission modified its calculations accordingly.

(11) The Council confirms the Commission's revised findings concerning normal value.

2. *Export price*

(12) In its provisional findings, as set out in recital 17 (of Regulation (EEC) No 1994/92), when constructing export prices, the Commission deducted 6 % as a reasonable profit margin for related importers in the Community. The Japanese exporters contested the correctness of this figure. In this regard, since this the profit margin was determined on the basis of the usual margin for the import trade sector concerned, it was considered that no other profit margin could be more reasonable. The Council confirms the Commission's findings.

(13) Following disclosure of the Commission's dumping calculations, both Japanese exporters contended that certain incorrect minor adjustments had been made in the provisional findings to their selling prices in the Community to the first independent customer. The Commission accepted these arguments, however the modifications subsequently made only affected the final dumping margin of one of the Japanese exporters.

(14) No other comments were received concerning export price. The Council accordingly confirms the Commission's revised findings.

3. *Comparison*

(15) No comments concerning comparison of export prices and normal value were received from the parties concerned and therefore the Council confirms the Commission's findings as set out in recitals 20 to 23 of Regulation (EEC) No 1994/92.

4. *Dumping Margins*

(16) On the basis of the modified calculations concerning normal value and export price, the definitive dumping margins calculated by the Commission expressed as a percentage of the cif value for each of the companies concerned are as follows:

— Koyo Seiko Co. Ltd 11,3 %,
— NTN Corporation 6,0 %.

The Council confirms these findings.

(17) The Council also confirms that for those producers that neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping margin for these companies is to be determined on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. Given that the cooperating companies comprise substantially all exports of TRB cups to the Community, it is considered appropriate to base the dumping margin for these other companies on the higher of the dumping margins found, i.e.: 11,3 %.

E. Injury

1. *General*

(18) The Commission has established injury in its provisional findings on the basis of data relating to Community producers in France, Germany and the United Kingdom. In this respect, one Japanese exporter requested that in addition to these three Member States production of TRB cups in Italy and Spain should also be taken into account.

(19) In this respect, the Commission found that the producers in France, Germany and the United Kingdom represent approximately 80 % of the total Community production of TRB cups. In conformity with its usual practice, the Commission considers that this is sufficient to be considered

representative for the whole of the Community production and that it is therefore both reasonable and appropriate to base its findings on data relating to these three Member States only. In addition, given the small market share of Italy and Spain on the Community market for the product concerned, minor differences in the economic situation of Community producers in these countries compared with the three Member States mentioned above, cannot substantially alter the general economic situation of the Community industry concerned.

(20) The Council confirms this view.

(21) As far as volume and prices of dumped imports were concerned, no new figures or arguments were presented following the imposition of provisional measures. The Council therefore confirms the Commission's findings as set out in recitals 31 to 33 of Regulation (EEC) No 1994/92 and in particular those relating to price undercutting.

2. *Situation of the Community industry*

(22) One Japanese exporter argued that there could not have been any injury to the Community industry as the sales value of the EC producers had increased between 1988 and the investigation period. In this regard, the investigation has shown that Community producers have indeed withdrawn from certain low priced, high volume, market sectors and concentrated their activities on higher value niche-markets. This resulted in a decrease in sales volume but an increase in sales value. The Commission considers, however, that it is important for Community producers to be present in all sectors of the market and be able to offer a full product range. Only in this way will they be able to compete with dumped imports and stay in the market in the medium to long term.

(23) The Council therefore confirms the Commission's view that the loss of sales volume is a clear indicator of the precarious economic situation of the Community industry.

(24) As far as profit is concerned, one Japanese exporter alleged that some cost factors of the Community producers were affected by purchases of raw materials from associated companies situated outside the Community and that such purchases could have influenced the profit and loss situation of the Community producers, In this respect, the Commission found that the costs of such purchases in relation to the overall cost of the finished products were generally in line with the ratios of raw material cost to finished cost of the Japanese exporters. For this reason, the Commission considers that the costs of the Community industry were not artificially influenced by the transactions between associated companies. In addition, even if these purchase prices may have had some influence on the financial situation of the Community producers, these effects cannot be so significant as to detract from the fact that the injury resulting from dumped imports has to be considered as material.

(25) In view of the above, the Council confirms the Commission's findings with regard to the situation of the Community industry and considers that material injury has occurred.

(26) In recitals 44 to 49 of Regulation (EEC) No 1994/92, the Commission has established that there is a causal link between the dumped imports and the material injury. Following the imposition of the provisional measures, the Commission considered again whether factors other than dumped imports from Japan could have caused material injury to the Community industry and in particular whether such injury was caused by an ill timed increase in the Community industry's capacity. In this regard, the Commission found that there was, indeed, an increase in capacity between 1989 and 1990 based on improved market expectations. It was further found that, in the second half of 1990, the bearing market shrank significantly and the Community producers were faced with excess capacity.

(27) Whilst this overcapacity increased the costs of the Community industry, this cannot detract from the fact that TRB cup prices were greatly depressed by the price undercutting which resulted from the dumped TRB cups sold by the Japanese exporters' Community subsidiaries. Whilst it cannot, therefore, be excluded that the capacity was not fully used and had some negative effects, it does not change the fact that the dumped imports, taken in isolation, have caused material injury.

(28) In view of the above and the data contained in Regulation (EEC) No 1994/92, the Commission has established that the injury suffered is material and that a causal link has been established between the injury and the dumped imports from Japan. The Council therefore confirms the conclusions of the Commission relating to injury.

G. Community interest

(29) No comments were received concerning this point. The Council therefore confirms the Commission's conclusions as stated in recital 52 of Regulation (EEC) No 1994/92.

H. Definitive duty

(30) With regard to the calculation of the definitive duty, the Commission has taken into consideration the injurious contribution of the dumped imports to the poor economic situation of the Community industry as well as higher production costs due to the overcapacity of the Community industry. In this respect, and after further examination following the imposition of provisional measures, it was considered that in the present case, the removal of the price undercutting of the Japanese producers would be sufficient to eliminate the injury caused by dumping.

(31) Expressed as a percentage of the cif value, the revised injury margins remain higher than the revised dumping margins established in recital 16 of this Regulation. This being so, the dumping margins should be imposed as the appropriate rates of anti-dumping duty. The Council confirms this conclusion.

(32) Accordingly, the following definitive rates of anti-dumping duty should apply:

— Koyo Seiko Co. Ltd 11,3 %,

— NTN Corporation 6,0 %.

(33) As far as companies not listed in the previous recital are concerned, duties should be fixed on the basis of the facts available. Given that the imports of the two companies concerned account for a high proportion, if not all imports into the Community of TRB cups originating in Japan, the Commission considers that the result of its investigation forms the most appropriate basis. Thus, the level of duty to be applied against all other Japanese manufacturers is 11,3 %.

(34) Since there is a danger of the payment conditions 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 only if the terms of sale provide for payment within 180 days of the date of the bill of lading for consignments of the goods concerned.

I. Collection of the provisional duties

(35) Given the precarious situation of the Community industry, the Council considers it necessary that the amounts secured by way of the provisional anti-dumping duty for all companies should be collected definitively to the extent of the duty rate definitively imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of outer rings of tapered roller bearings, further worked than turned, originating in Japan and falling within CN code ex 8482 99 00 (Taric codes 8482 99 00*11 and 8482 99 00*91).

2. The rate of duty for the product specified in paragraph 1 shall be 11,3 % (Taric additional code 8669), except for products manufactured by NTN Corporation (Taric additional code 8668), when it shall be 6,0 %.

3. The rates of the duty shall be levied on the net, free-at-Community-frontier price, not cleared through customs. The free-at-Community-frontier price shall be net if the actual payment conditions are such that payment is made within one hundred and eighty days of the date of the bill of lading for consignments of the goods concerned. This price shall be increased or reduced by 1 % for each month of increase or decrease in the period of payment.

4. The provisions in force concerning customs duties shall apply to the said duty.

Article 2

1. The amounts secured by way of the provisional anti-dumping duty under Regulation (EEC) No 1994/92 in respect of outer rings of tapered roller bearings, further worked than turned, shall be definitively collected at the duty rate definitively imposed.

2. Amounts secured in excess of the definitive rate of duty shall be released.

3. Amounts secured in respect of outer rings of tapered roller bearings which have only been turned shall also be released.

Article 3

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, 8 January 1993.

For the Council

The President

U. ELLEMANN-JENSEN