COMMISSION REGULATION (EC) No 1076/94

of 6 May 1994

imposing a provisional anti-dumping duty on imports of certain watch movements originating in Malaysia and Thailand

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Economic Community (1), as last amended by Regulation (EC) No 522/94 (2), and in particular Article 11 thereof,

After consultations within the Advisory Committee,

WHEREAS:

A. PROCEDURE

(1) In July 1993, the Commission announced, by a notice published in the *Official Journal of the European Communities* (3), the initiation of an anti-dumping proceeding concerning imports of certain watch movements originating in Malaysia and Thailand.

The proceeding was initiated as a result of a complaint lodged by France Ebauches, the sole Community producer of the product in question.

The complaint contained evidence of dumping of the product originating in the countries mentioned above, and of material injury resulting therefrom; this evidence was considered sufficient to justify opening a proceeding.

(2) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting countries, and the complainant, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(3) One producer in Thailand and its related selling company in Hong Kong, one importer and the complainant Community producer made their views known in writing.

(4) Although information was requested from all producers known to be concerned in Malaysia and Thailand, only one Thai producer agreed to co-operate in the proceeding. Therefore, for the remainder, findings were made on the basis of the facts available, in conformity with Article 7 (7) (b) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the Basic Article'). The Commission sought and verified all information it deemed necessary for the purposes of a preliminary determination of dumping and injury, and carried out investigations at the premises of the following:

(a) Complainant Community producer:

France Ebauches SA, Besançon, France.

(b) Thai producer:

Ronda (Thailand) Co., Ltd., Samutprakarn.

(c) Hong Kong exporter:

Sepro Ltd. (affiliated to Ronda (Thailand) Co. Ltd).

(5) The investigation of dumping covered the period from 1 June 1992 to 31 May 1993 (hereinafter referred to as 'the investigation period').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(i) Description of the product concerned

(6) The products covered by the complaint, and for which the proceeding was opened, are assembled watch movements, battery or accumulator powered, intended to be mounted on analogue watches. The product falling within CN code 9108 11 00.

(7) The watch movements concerned are classified in various 'calibers' according to their size. However, no significant differences exist in the basic physical characteristics and technology of the various calibers of watch movement, all of which are largely interchangeable. In these circumstances, all watch movements should be considered as one product for the purpose of their proceeding.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 66, 10. 3. 1994, p. 10.
(3) OJ No C 183, 6. 7. 1993, p. 9.

(ii) **Like product**

(8) The Commission found that the watch movements produced by the Community industry and those produced in Thailand and Malaysia and exported to the Community were alike in their essential physical and technical characteristics, application and in their end uses. The Commission considered, therefore, that the product imported from Thailand and Malaysia is a like product to that produced and sold by the Community industry, within the meaning of Article 2 (12) of the Basic Regulation.

C. **DUMPING**

(i) **Normal value**

(9) For the cooperating Thai producer, given that its volume of domestic sales during the investigation period was insignificant and thus did not permit a proper comparison, normal value was constructed on the basis of the cost of manufacturing of the producer concerned plus an amount for selling, general and administrative expenses and a reasonable profit.

As far as the manufacturing costs are concerned, it was found that the materials used by this producer were to a large extent manufactured by its parent company. The prices charged for these components appeared not to be in the ordinary course of trade, and since the parent company refused to cooperate in the proceeding, recourse had to be made to Article 7 (7) (b) of the Basic Regulation, whereby these costs were determined on the basis of the facts available, in this case the costs for similar components as supplied in the complaint.

As far as selling, general and administrative expenses were concerned, since no information was available on such expenses given the lack of cooperation of the Thai and Malaysian producers, they were calculated, in accordance with Article 2 (3) (b) of the Basic Regulation, on a reasonable basis. The Commission provisionally calculated these expenses on the basis of the costs borne by the Thai producers' affiliated exporter in Hong Kong. On the same basis, a profit of 7,5 % was considered reasonable for this type of industry, which corresponded to the information contained in the complaint.

(ii) **Export price**

(10) Since all export sales exported to the Commission in the context of this proceeding were made to unrelated importers in the Community, export prices were established on the basis of the prices actually paid or payable for the products sold for export to the Community, in accordance with Article 2 (8) (a) of the Basic Regulation.

(iii) **Comparison**

(11) Normal value, for each product type was compared with the export price for the corresponding type, transaction by transaction, at the same level of trade on an ex-works basis. For the purposes of a fair comparison, adjustments were made in accordance with Article 2 (9) and (10) of the Basic Regulation in respect of differences affecting price comparability, such as differences in physical characteristics and in selling expenses for which satisfactory evidence was submitted.

(iv) **Dumping margins**

(a) *Cooperating exporters*

(12) The comparison showed the existence of dumping, the dumping margin being equal to the amount by which the normal value, as established, exceeded the price for export to the Community.

(13) The weighted average dumping margin for the cooperating Thai producer, Ronda (Thailand) Co., Ltd., expressed as a percentage of the free-at-Community-frontier price, was 10,6 %.

(b) *Non-cooperating producers*

(14) For those producers in the countries concerned which neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping margin was determined on the basis of the facts available in accordance with Article 7 (7) (b) of the Basic Regulation.

(15) Concerning imports from Thailand, the Commission considered that, given the low proportion of imports into the Community covered by the cooperating producer, the information obtained from this producer could not be held to be representative. Therefore, in view of the lack of reliable information from other sources, it was considered appropriate to establish the dumping margin for non-cooperating producers in Thailand on the basis of the best information available, being a comparison of export prices supplied by the complainant to normal values as established for the cooperating producer.

(16) Concerning imports from Malaysia, the Commission considered that, in the absence of any cooperation on the part of Malaysian producers, it had to resort to the best information available. Since information contained in the complaint indicated that Malaysian and Thai production costs and export prices are similar, it was appropriate and reasonable that the dumping margin established for Thai producers should also apply to Malaysian producers.

(17) On the basis of the above, the dumping margin, expressed as a percentage of the CIF Community frontier prices, for both Thailand and Malaysia is 36,2 %.

D. INJURY

(i) Cumulation of the effects of the dumped imports

(18) In analysing whether cumulation of these imports was appropriate, the Commission examined whether all imports at dumped prices contributed to the material injury suffered by the Community industry. For that purpose, the Commission considered the comparability of the products imported from the countries concerned in terms of physical characteristics and interchangeability of end uses. It also examined the significance of the volumes imported, the similarity of their channels of distribution and prices, and the simultaneity of their presence on the Community market.

(19) After examination of the facts, it was found that the watch movements imported from both countries concerned compete with each other and with the like product manufactured by the Community industry. In these circumstances, it is considered that there are sufficient grounds to cumulate the imports from both countries concerned.

(ii) Community consumption, volume and market share of the dumped imports

(20) Community consumption of the product concerned was almost 13,5 million units in 1990, 12,8 million in 1991, 12,3 million in 1992 and 12,7 million during the investigation period. The volume of the dumped imports from the countries concerned increased from 155 258 units in 1990, to 1 234 864 in 1991, to 1 440 225 in 1992 and to 1 502 882 during the investigation period i.e. by 868 % over the period. The combined Community market share of these imports increased from 1,2 % in 1990, to 9,6 % in 1991, to 11,7 % in 1992 and to 11,8 % during the investigation period.

(iii) Prices of the dumped imports

(21) Prices of the imported product concerned were, during the investigation period, below the prices practised by the Community industry. Price undercutting was established by comparing prices of the cooperating exporter concerned for sales to the first independent customer in the Community with weighted average prices of the Community industry at the same level of trade.

This comparison was made on a product-type basis for each of the types imported which were considered for the dumping determination. Adjustments were made, where appropriate, to ensure comparability in terms of transport costs, customs duty and importers' profit margin.

The results of the comparison showed margins of undercutting of up to 36,9 %.

(iv) Situation of the Community industry

(a) *Production and capacity utilization*

(22) The volume of production of the product concerned by the Community industry increased gradually between 1990 and 1992 but fell back to the 1990 level during the investigation period.

Regarding capacity utilisation, it should be noted that the components (i.e. movement sets) manufactured by the Community industry and used in the production of the product concerned are also part of the product range marketed by this company. Because of this, it is difficult to determine the capacity utilisation rate which is specific to the product concerned. However, overall capacity utilisation of movement sets, not taking account of an increase in capacity installed resulting from the development in 1992 of new models requiring less machine time, decreased from 53 % in 1990 to 37 % during the investigation period.

(b) *Sales and market share*

(23) The volume of sales in the Community by the Community industry decreased by more than 7 % between 1990 and the investigation period. This development of sales volume, compared to that of apparent Community consumption, shows a market share held by the Community industry which decreased by 2 % between 1990 and the investigation period.

(c) *Price depression*

(24) Because of the downward pressure on prices resulting from the dumped imports, the Community industry was forced to continually decrease its prices between 1990 and the investigation period in an attempt to maintain its capacity utilisation and market share. Prices, on an indexed basis, decreased from 100 in 1990, to 90 in 1991 and to 81 during 1992 and the investigation period.

(d) *Profitability*

(25) The Community industry concerned made efforts to cut its costs in order to resist the effect of the dumped imports on prices and to restore its profitability. These cuts, which were made at the expense of reducing investments necessary to ensure its viability, have led to a certain reduction in the level of losses experienced by the industry between 1990 and the investigation period.

(v) **Conclusion**

(26) The preliminary examination of the facts on injury shows that the Community industry, despite reducing its prices in an attempt to compete with the dumped imports from the countries concerned, experienced a decrease in sales volume and market share. Despite the cost savings made by the industry, the combined effect of the decrease in prices and sales volume has resulted in continued losses being experienced by the industry.

E. CAUSATION

(27) The Commission examined whether the injury suffered by the Community industry had been caused by the dumped imports and whether other factors might have caused or contributed to that injury.

(a) **Effect of dumped imports**

(28) In its examination, the Commission found that the increase in volume and market share of the dumped imports from the countries concerned coincided with the worsening situation of the Community industry. As a result of the low prices at which the imported products were sold on the Community market, the Community industry was forced to reduce its prices in a vain attempt to maintain its capacity utilisation and market share. This suppression of prices led to a worsening of the financial situation of the Community industry. This situation corresponded closely in time with the substantial increase in the low-priced imports from the countries concerned.

(b) **Effect of other factors**

(29) The Commission examined whether the injury suffered by the Community industry could have been caused by factors other than the dumped imports. In particular, the Commission looked at the evolution and impact of imports from third countries not included in this proceeding and the trend of consumption in the Community market.

(30) The volume of imports from third countries not included in the proceeding decreased by 19 % between 1990 and the investigation period, with a corresponding fall in market share of 14 %. The Commission noted the wide variation in the level of prices of these imports as they appear in the Eurostat statistics. In this respect, the Commission considers that no conclusion can be drawn from the prices shown in these statistics as these mask the extremely important differences in price among different product types, only some of which are included in the product definition in this case.

(31) Apparent Community consumption of the product concerned decreased by more than 5 % between 1990 and the investigation period. This decline in consumption explains, in part, the decrease in sales by the Community industry, but not the reduction in its market share. Between 1990 and the investigation period, the dumped imports from the countries concerned increased their market share from 1,2 % to 11,8 %. In contrast, sales by the Community industry in the Community market decreased faster (by 7 %) than Community consumption and, consequently, its corresponding market share fell by 2 %.

(32) The Commission has concluded, therefore, that, although it could not be excluded that the above factors might have a certain adverse effect on the Community industry, the dumped products originating in Malaysia and Thailand, because of their prices, their penetration of the Community market, the resulting loss of market share and continuing poor financial situation of the Community industry, have, taken in isolation, caused material injury to that industry.

F. COMMUNITY INTEREST

(33) The purpose of anti-dumping duties is, in general, to stop distortion of competition arising from unfair commercial practices and thus re-establish open and fair competition on the Community market, which is fundamentally in the Community interest.

The deterioration of the Community industry is especially noticeable from its loss of market share, despite making cost cuts and reductions in prices, and also from its continuing poor financial situation.

(34) Although the Commission received no comments from importers or users of the product concerned about the possible effects of the imposition of anti-dumping measures on their business, it could conclude that, given the large availability of this product from various sources, no adverse consequence on the competitive situation on the Community market is to be expected from the imposition of anti-dumping measures.

(35) The Commission considers, therefore, that it is in the Community interest to remove the effects of the injury on the Community industry and to restore fair competition by the imposition of provisional anti-dumping measures on imports of the product concerned originating in Malaysia and Thailand.

G. DUTY

(36) For the purpose of establishing the level of the provisional duty, the Commission took account of the dumping margins found and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

(37) Since the injury consisted mainly of financial losses, the removal of such injury required that the industry be put in a position in which its prices could be increased to a profitable level. In order to achieve this, export prices 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 industry plus a margin of profit sufficient to ensure the viability of that industry.

(38) On this basis, the weighted average export prices for those product types used in the determination of dumping were compared, for the investigation period, on a free-at-Community-frontier level increased by customs duties and, where appropriate, a profit for the importer, with the cost of production of the Community producer concerned, for the corresponding product type, plus a margin of profit, provisionally set at 7,5 %.

These comparisons show injury margins which, expressed on a weighted average basis as a percentage of the free-at-Community-frontier price, ranged from 44,7 % to 62,5 %.

(39) Since the margins of dumped found were below the corresponding increases in export prices necessary to remove the injury as calculated above, provisional duties to be imposed should therefore correspond to the dumping margins established.

H. FINAL PROVISION

(40) In the interest of sound administration, a period should be fixed in which the parties concerned may make their views known 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 the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of watch movements, complete and assembled, battery or accumulator powered, and with mechanical display only or with a device to which a mechanical display can be incorporated, falling within CN code 9108 11 00 and originating in Malaysia and Thailand.

2. The rate of the duty applicable to the net free-at-Community-frontier price before duty shall be as follows:

	Rate of duty	Taric additional code
Malaysia	36,2 %	—
Thailand	36,2 %	8788

with the exception of imports which are manufactured and sold for export to the Community by the following company which shall be subject to the rate of duty mentioned hereunder:

	Rate of duty	Taric additional code
Ronda (Thailand) Co. Ltd Samutprakarn, Thailand	10,6 %	8787

3. 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) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and ask to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

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, 6 May 1994.

For the Commission

Karel VAN MIERT

Member of the Commission