COUNCIL REGULATION (EC) No 1114/97

of 17 June 1997

terminating the anti-dumping proceeding concerning imports of outer rings of tapered roller bearings originating in Japan and repealing the anti-dumping measures imposed on such imports

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 9 and Article 11 (3) thereof,

Having regard to the proposal submitted by the Commission after consultation within the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In June 1994, the Commission received a request for a review of the definitive anti-dumping measures on imports of outer rings of tapered roller bearings (hereafter referred to as 'Cups') originating in Japan imposed by Council Regulation (EEC) No 55/93 [2]. This request was lodged by the Federation of European Bearing Manufacturers' Associations (FEBMA) on behalf of Community producers whose collective output was stated to constitute a major proportion of total Community production of Cups.

(2) The request asserted that the anti-dumping measures in force were not or no longer sufficient to counteract the dumping which is causing injury, as both dumping and injury resulting therefrom were alleged to have increased.

(3) Considering that there was sufficient evidence to warrant the initiation of a review under Article 14 of 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 [3] the Commission published on 20 October 1994 a notice of initiation of a review of the anti-dumping measures applicable to imports of Cups originating in Japan [4].

(4) The Commission officially advised the Community producers, the importers and the Japanese producers/exporters known to be concerned as well as the representatives of Japan of the opening of the investigation and gave the parties concerned the opportunity to make known their views in writing and to request a hearing.

(5) The Commission sought and verified all information it deemed to be necessary for the purpose of its determination.

(6) The investigation period applied in the present proceeding for establishing whether dumping and undercutting existed was from 1 October 1993 to 30 June 1994. For the analysis of the trends of the factors analysed for the purposes of establishing whether the Community industry suffered injury caused by the imports in question the period from 1 January 1991 to 30 June 1994 was used. In order to ensure comparability of the data relating to the investigation period with that relating to the previous calendar years, this was extrapolated to reflect the situation in a twelve months' period. Since this review was initiated before the accession of Austria, Finland and Sweden meaning that the investigation period ended before that accession, the investigation of injury is based on an analysis of facts pertaining to the Community of Twelve.

(7) The investigation has exceeded the normal time period because of the complexity of the assessment of the injury and causality aspects of the proceeding, which was mainly due to the high number and degree of diversity of the types within the product investigated.

(8) The complainant, FEBMA, lodged the request for a review on behalf of the following producers:

[1] OJ No L 56, 6. 3. 1996, p. 1. Regulation as amended by Council Regulation (EC) No 2331/96, OJ No L 317, 6. 12. 1996, p. 1.
[2] OJ No L 9, 15. 1. 1993, p. 7.
[3] OJ No L 209, 2. 8. 1988, p. 1. Regulation replaced by Regulation (EC) No 384/96.
[4] OJ No C 292, 20. 10. 1994, p. 5.

— FAG Kugelfischer Georg Schäfer KGaA (Germany);

— SKF GmbH (Germany);

— SKF Industrie SpA (Italy);

— SKF Española S.A. (Spain);

— Timken France (France)

— British Timken (United Kingdom); and

— Société Nouvelle de Roulements (France).

(9) During the investigation period, the following companies exported Cups originating in Japan to the Community:

— Koyo Seiko Co. Ltd. (Osaka); and

— NTN Corporation (Osaka).

(10) Both of these companies cooperated in the investigation by submitting a response to the Commission's questionnaire and on-the-spot verification visits were carried out on their premises by the Commission's services.

(11) No unrelated importers cooperated with the Commission in this investigation.

(12) In addition, numerous end-users submitted their comments which were taken into account when they were substantiated by supporting evidence.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(13) The product under consideration is outer rings of tapered roller bearings which are a component of tapered roller bearings.

(14) In Japan and in the Community, Cups are mainly sold to two categories of customers, namely industrial users and distributors.

(15) It should be noted that complete tapered roller bearings include the following components: (1) an inner ring, being a cone-shaped ring, made of the same material as the outer ring (the inner and outer ring are often stamped from the same piece of material); (2) tapered anti-friction rollers, fitted on the inner ring and which allow it to move in relation to the outer ring; (3) a cage, which holds the rollers in place on the inner ring; and (4) an outer ring or cup which is the female part into which the male part, the cone (consisting of the inner ring, rollers and cage), is assembled in order to produce a complete tapered roller bearing.

(16) In connection with this investigation, FEBMA and certain Japanese producers submitted arguments in favour of the Commission regarding complete tapered roller bearings and Cups as one like product and thus merging this review investigation with the investigation concerning imports of complete tapered roller bearings originating in Japan [1].

(17) The above interested parties have stated that Cups, just as cones, the latter being covered by the proceeding concerning complete tapered roller bearings, are merely a component of the finished product and are only sold separately when delivered in conjunction with the other constituent components of tapered roller bearings in order to be assembled into a complete tapered roller bearing at the premises of the final customer.

(18) However, in line with the reasoning set forth by the Court of First Instance of the European Communities [2], it is considered that tapered roller bearings and Cups constitute separate products, each of which can legally be the subject of a separate anti-dumping proceeding.

(19) It was found that Cups produced in Japan, sold domestically and exported to the Community, and Cups produced by Community producers and sold on the Community market are alike in their physical characteristics and uses. They were therefore considered as a like product in accordance with Article 1 (4) of Regulation (EC) No 384/96.

C. DEFINITION OF THE COMMUNITY INDUSTRY

(20) One Japanese-owned company produced tapered roller bearings and components thereof, including Cups, in the Community during the period under consideration. This company, however, was not considered part of the Community industry within the meaning of Article 4 (1) (a) of Regulation (EC) No 384/96. This approach was considered justified as the company is related to an exporter from

[1] Commission Decision 92/27/EC of 3 December 1996 terminating the anti-dumping proceeding concerning imports of tapered roller bearings originating in Japan. OJ No L 10, 14. 1. 1997, p. 34.

[2] Case T-166/94 Koyo Seiko Co. Ltd. v. Council of the European Union. Judgment of 14 July 1995. E.C.R. 1995, p. II — 2129.

Japan of the product under investigation. The company sells all its production to the sales subsidiaries located in the Community and equally related to the exporter from Japan and which are also involved in selling imported Cups originating in Japan. It is considered that in those circumstances the producing company located in the Community might therefore benefit from any unfair business practices. In such circumstances, the producer was not considered to be behaving as a normal Community producer, but rather as a complementary source of supply for an exporter accused of practising dumping.

(21) One of the Community producers mentioned in recital 8 did not submit a response to the Commission's questionnaire within the deadline set by the Commission. In view of this non-cooperation on the part of the company in question, it was excluded from the definition of Community industry for the purpose of the injury determination in connection with this investigation. Consequently, for the remainder of this analysis, the term Community industry refers to the cooperating Community producers which supported the complaint, whose collective output of Cups constitutes a major proportion of total Community production within the meaning of Article 4 (1) of Regulation (EC) No 384/96.

D. INJURY

(22) In view of the fact that the product under investigation in this review is a component of tapered roller bearings, the majority of the Community producers could, in certain instances, not distinguish in their internal accounts between relating to complete tapered roller bearings and Cups respectively. Thus, where necessary, it was considered appropriate to resort to an application of Article 3 (8) of Regulation (EC) No 384/96 which provides that, 'if [...] separate identification of [the production, sales and profits of the product under investigation] is not possible, the effects of the dumped imports shall be assessed by examination of the production of the narrowest group or range of products, which includes the like product, for which necessary information can be provided'.

(23) In this review, the narrowest group of products for which the Community producers could provide the necessary information on the above factors is complete tapered roller bearings. Whenever the abovementioned principle of estimation has been applied in the analysis below, this has been clearly indicated.

(24) Also, as in the initial investigation, accurate officially-compiled statistics are not available since the Combined Nomenclature heading under which Cups are classified covers more than just that product. The injury analysis is therefore based on data provided by the Community producers and the Japanese exporters and on estimated data based on information submitted by the parties concerned.

Community consumption

(25) Between 1991 and the investigation period, the estimated consumption of Cups in the Community of Twelve decreased by 4,2 %. The above decrease of the market is the result of the general evolution of the business cycle on the Cup market whose size varies according to the general level of activity on the part of the users of Cups.

Volume, sales and market share of imports

(26) It is considered that, in this specific case, only sales of Japanese Cups on the open market to independent purchasers, i.e. sales of Cups released as such for free circulation in the Community, are relevant for the injury determination since only such sales are in direct competition with the sales of the Community industry.

(27) Between 1991 and the investigation period, sales of imported Cups originating in Japan to independent purchasers in the Community (expressed in pieces) decreased by 35 %. In line with this decrease in sales and contrary to the allegations by the Community industry, the resulting market share of the imports under consideration decreased steadily from a market share of 6,6 % in 1991 to a market share of 4,5 % in the investigation period.

Prices of imports

(28) The prices charged by the Japanese producers were compared with the prices charged for identical types by the Community producers which could provide transaction by transaction data for Cups sold separately by channel in the four most important Member States (Germany, the UK, France and Italy which, in view of the volumes of sales made in those Member States, were considered as being representative of the situation in the entire Community). Based on this analysis, it was found that undercutting on the part of the Japanese producers did occur during the investigation period.

(29) However, no pertinent conclusions can be drawn from this analysis due to the fact that the Japanese companies involved sell only a limited number of types which are identical or directly comparable to those manufactured by the Community producers in sufficient quantities to render meaningful a comparison with European producers. Under these conditions, no individual margins for price undercutting have been established for each company involved.

Situation of the Community industry

Sales and market shares

(30) The quantity of Cups manufactured and sold in the Community by the Community industry (expressed in pieces) decreased by 16,5 % during the period under consideration. The resulting market share of the Community industry decreased in the same period from around 84 % in 1991 to around 74 % at the end of the investigation period.

(31) The market share of imported Cups, sold separately, manufactured by the Community producers outside the Community of Twelve (in Austria and the United States) at long-established manufacturing facilities increased from 3,6 % to 7,3 %. In addition, the market share of imports from other third countries increased from 5,5 % in 1991 to 11,8 % in the investigation period.

Production, capacity and capacity utilization

(32) For the reasons given above in recitals 21 and 22, the analysis of the evolution of production, capacity and capacity utilization is based on data regarding complete tapered roller bearings.

(33) As to production, between 1991 and the investigation period, production of the Community industry decreased by 10,8 %.

(34) In the same period the production capacity of the Community industry decreased by 9,3 % whilst its capacity utilization decreased from 88,8 % to 86,6 %.

Prices and profitability

(35) The evolution of prices between 1991 and the end of the investigation period in the Community of the Cups sold separately by the Community producers was investigated. In view of the argument by the Community producers that the Japanese pricing policy affected the prices applied by the Community producers, this irrespective of whether the types sold by the Japanese producers were identical to those sold by the Community producers or not, the analysis of the evolution of the prices applied by the Community producers comprised all types sold by these producers during the investigation period and not only those which were considered as identical to those sold by the Japanese producers.

(36) This analysis was made for the prices charged by the Community producers (all sales channels) in Germany, the UK, France and Italy. On this basis, it was found that the prices in the Community of Cups remained stable over the period investigated. Indeed, the prices of the types sold by the Community industry during the investigation period, on a weighted average basis (comprised of the prices of all the Community producers for their sales to all categories of customers) increased by 1,88 %.

(37) In this respect, it should be noted that, indeed, the return on sales of the Community producers specifically relating to complete tapered roller bearings during the period under consideration developed from a loss of around 11 % in 1991 to a loss of around 17 % in 1993. Between 1993 and the end of the investigation period, the situation of the Community industry improved, however, to a loss of around 7 %, thus showing a certain recovery.

Employment

(38) Between 1991 and the investigation period, in the Community industry employment, relating to the manufacture of complete tapered roller bearings, decreased by 27,4 %.

Conclusion on injury

(39) Based on the above analysis, it is concluded that, during the period under investigation, the Community industry suffered certain difficulties but improved its financial situation.

E. CAUSALITY

(40) In accordance with Regulation (EC) No 384/96, the Commission therefore investigated whether the volumes and prices of the imports concerned were responsible for the situation of the Community industry and had an impact thereon to a degree which enables it to be classified as material within the meaning of Article 3 (6) of that Regulation. In this investigation, care was taken to ensure that any impact on the Community industry caused by other factors was not attributed to the imports concerned.

(41) Imports from Japan and their market shares in the Community have been falling over the period examined for the analysis of injury. The market share of own-imports on the part of the Community producers from countries in which they have long-established manufacturing facilities and imports from other third countries have increased by a rate which more than compensates for the decrease recorded in the Community industry's market share.

(42) As to prices, the Community industry has claimed that undercutting or lower price offers on the part of the Japanese exporters has had the effect of imposing pressure on prices which forced the Community Cup producers to follow the prices downwards in order to defend their market shares at great financial expense. It is considered that analysis of the evolution of the prices applied by the Community producers refutes the conclusion submitted by the Community producers that the imports had the effect of depressing or suppressing prices applied by the Community producers during the period under consideration to an extent which may be characterized as material within the meaning of Article 3 (3) of Regulation (EC) No 384/96. With regard to the submission of the Community industry that it was prevented from increasing its prices due to Japanese price undercutting, in particular for major high volume customers, it is considered that if such price suppression took place in order to maintain volumes and market shares which in fact to a large extent was accomplished, the result would have been increased financial losses. However, the abovementioned findings of the investigation demonstrate the opposite. The statements on the part of the Community industry, that prices are highly depressed or suppressed to a material degree, are not substantiated especially in view of the fact that the period in question was characterized by a recession. No price depression was found and the price increase found covers a substantial part of the general cost increases recorded in the industry.

(43) As regards the Community industry's reduction in capacity, the Community industry has argued that it had to reduce its capacity and investment during the reference period in order to lower the break-even point of the industry and thus to reduce its losses. This leads to a situation where Community producers were not able to meet customer demands during the year 1995, which was after the investigation period, but during which the consumption of Cups improved. In order to invest in new capacity, the Community producers claimed that they would have had to have reached a substantially higher return on sales than that which was recorded during the investigation period.

(44) While information relating to a period subsequent to the investigation period normally cannot be taken into account, it is acknowledged that in 1995 demand for complete tapered roller bearings and components thereof boomed. For this reason also, the Community industry published excellent results (also financial) for 1995. It is acknowledged that there have been shortages in supply from the Community producers' manufacturing facilities in the Community during this year. However, it is considered that it is normal business behaviour to reduce costs and this all the more so when the industry is in an economic recession. On the other hand, during a booming market, it may also be normal to increase capacity and to finance this by normal financial resources. This capacity restriction should therefore not be attributed to the imports in question and this all the more so as the volume of these imports decreased more than the capacity restriction of the Community industry. In addition, this capacity restriction must be seen in conjunction with the apparent shift of production on the part of the Community industry to long-established manufacturing facilities in countries outside the Community of Twelve.

(45) As to the decrease in employment, during the period in question, the Community industry shifted capacity within their global manufacturing structure and undertook important restructuring efforts to improve productivity in general which have been reflected in a decrease in employment which cannot be attributed to the imports in question.

Conclusion

(46) Given the above findings, it is concluded that the imports in question did not, in isolation, have a materially injurious impact on the situation of the Community industry and the allegations set forth in the request for a review submitted by the Community industry that the measures in force

were insufficient to offset increased injury are therefore refuted. The precarious situation of the Community industry may rather stem from other factors such as other third country imports and the recession which prevailed during the investigation period. Thus, the measure under review did have the desired effects, i.e. to reduce the impact of the imports in question below the degree enabling it to be classified as material within the meaning of Article 3 (6) of Regulation (EC) No 384/96.

(47) The question is then whether the removal of this measure would reverse this situation.

F. LIKELY EFFECTS OF THE REPEAL OF THE MEASURES IN FORCE

(48) As was demonstrated above, the facts established show that the measures under review have reduced the injurious impact of the imports in question below the degree enabling it to be classified as material within the meaning of Article 3 (6) of Regulation (EC) No 384/96.

(49) The Community industry has submitted that if the measure currently in force were to be repealed it is likely that material injury caused by the imports in question would recur.

(50) It is considered that it is not likely that the removal of the anti-dumping measure under review would create a situation in which a materially injurious impact of these imports would recur. This position is based on an analysis of the trend of the Japanese market shares, the lack of any material effect thereof on the Community producers' pricing and the significant increase in imports from sources other than Japan including from facilities related to the Community producers.

(51) Other elements should also be highlighted in this regard, such as the high market share held by the Community industry, the fact that its sales are, to a significant extent, regulated by long-term contracts with large industrial users and the fact that the Community industry, both currently and historically, has constituted a secure source of supply for the Community user industry due to its proximity and high level of quality and service levels.

(52) In addition, official statistics demonstrate that production capacity for bearings in Japan remained stable from 1990 until 1994 and increased subsequently in line with the recovery of demand worldwide. However, further to an analysis of exports from Japan to countries other than the Community, it would appear that there is no sufficiently disposable capacity in Japan to produce substantially increased quantities for export to the Community.

(53) Finally, it should be stressed that the situation described above for the Community industry during the investigation period has shown a certain recovery in the market for tapered roller bearings and components thereof. This development was sustained and further improved after the investigation period as illustrated by general results of the major Community producers published for 1995. It is not considered as likely that this situation would change as a result of the lapse of the current measures due to the lack of materially injurious impact of the imports in question on the situation of the Community producers as demonstrated above.

G. DUMPING

(54) In view of the above conclusion, it was not considered necessary to analyse whether the imports in question were dumped, and if so, if the dumping margin thereof had increased or not since this would not have any relevance to the above analysis and would consequently not alter the conclusions reached.

H. CONCLUSION

(55) Given the above findings, it is considered that the result of the review of the anti-dumping measures in force with respect to imports of Cups originating in Japan is that the anti-dumping proceeding concerning these imports should be terminated and that the anti-dumping measures in force should be repealed.

(56) The Commission informed the interested parties, including the Community industry, of its findings. After having been informed by the Commission of the above facts, findings and conclusions, representatives of the Community industry made further representations, both in writing and orally, concerning the impact of the Japanese imports in question on the Community industry. However, it is considered that these representations could not, after examination, reverse the above conclusions. Certain Member States raised objections to this course of action,

HAS ADOPTED THE FOLLOWING REGULATION:

Article 1

The anti-dumping proceeding concerning imports of outer rings of tapered roller bearings falling within CN Code No ex 8482 99 00 originating in Japan is terminated and the anti-dumping measures imposed by Regulation (EEC) No 55/93 on such imports are hereby repealed.

Article 2

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 Luxembourg, 17 June 1997.

For the Council

The President

A. JORRITSMA-LEBBINK