COUNCIL REGULATION (EC) No 2593/97

of 19 December 1997

amending Regulation (EEC) No 3482/92 imposing a definitive anti-dumping duty on imports of certain large electrolytic aluminium capacitors originating in Japan

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 11 (3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In December 1992, the Council, by Regulation (EEC) No 3482/92 [2], imposed a definitive anti-dumping duty on imports of certain large aluminium electrolytic capacitors (hereinafter 'LAECs') originating in Japan. For Rubycon Corporation (hereinafter 'Rubycon'), the rate of the definitive anti-dumping duty amounted to 30,1 % expressed as a percentage of the net, free-at-Community-frontier price, before duty. The investigation that led to the imposition of these measures is hereinafter referred to as 'the initial investigation'.

2. Request for a review investigation

(2) In September 1996, Rubycon lodged a request for an interim review pursuant to Article 11 (3) of Council Regulation (EC) No 384/96 (hereinafter the 'Basic Regulation'). Rubycon alleged that the continued imposition of the anti-dumping duty would no longer be necessary to offset the dumping as established in the initial investigation.

3. Review investigation

(3) The Commission considered that Rubycon had submitted sufficient prima facie evidence to justify an interim review. Consequently, the Commission announced on 17 December 1996, by a notice published in the *Official Journal of the European Communities* [3], the initiation of a review investigation pursuant to Article 11 (3) of the Basic Regulation and commenced an investigation.

Since no other interested party had submitted sufficient evidence justifying the initiation of a review investigation, the investigation was limited to Rubycon. The investigation solely concerned the dumping aspects.

(4) The Commission officially advised Rubycon, the representatives of the exporting country, two unrelated importers and the complainant in the initial investigation (hereinafter 'Farad') of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing. All parties who so requested were granted a hearing.

(5) The investigation covered the period of 1 October 1995 to 30 September 1996 (hereinafter referred to as 'the investigation period'). For the purpose of this investigation, the geographical scope of the investigation was the Community as composed at the time of initiation of this review.

(6) The Commission sent questionnaires to all parties known to be concerned and received replies from Rubycon, its related importer in the Community (hereinafter 'Rubycon UK') and two unrelated importers in the Community.

(7) The Commission sought and verified all the information it considered necessary and carried out investigations at the premises of the following companies:

(a) *producer/exporter in Japan*

— Rubycon Corporation, Tokyo and Ina,

(b) *importer related to the producer/exporter*

— Rubycon UK, South Ruislip, United Kingdom,

(c) *importer not related to the producer/exporter*

— Codico Gesellschaft mbH & Co KG, Vienna, Austria (hereinafter Codico).

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).
[2] OJ L 353, 3. 12. 1992, p. 1.
[3] OJ L 381, 17. 12. 1996, p. 7.

During the on-the-spot verification at the premises of Codico, it became apparent that the company had provided misleading information. In particular, the company had not reported a significant number of its import transactions. This and some other deficiencies did cast a serious overall doubt on the reliability of the information provided by the company. Consequently, the Commission decided to base its findings for this company on facts available in accordance with Article 18 of the Basic Regulation and informed the company accordingly.

An investigation at the premises of the other importer were not deemed necessary due to the relatively insignificant importance of its total import transactions relating to LAECs produced by Rubycon.

(8) Owing to the volume and the complexity of the data gathered and examined, the investigation exceeded the normal time period of 12 months provided for in Article 11 (5) of the Basic Regulation.

(9) Parties were informed in writing of the essential facts and considerations on the basis of which it was intended to amend Regulation (EEC) No 3482/92. The comments presented by the parties were considered and, where appropriate, the findings were modified to take account of them.

B. PRODUCT CONCERNED

(10) The product subject to the definitive anti-dumping duty referred to in recital 1 is large electrical capacitors, aluminium electrolytic, with a CV product (capacitance multiplied by rated voltage) between 18 000 and 310 000 μc (micro-coulombs), 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. The product is classifiable under CN code ex 8532 22 00.

For the purpose of this review investigation which concerned only one of the known Japanese producers/exporters and which was limited to dumping aspects, it was not considered appropriate to extend the like product definition as was done — due to technical developments of the product concerned — in the investigation relating to imports of LAECs originating in the Republic of Korea and Taiwan (1).

(1) Regulation (EC) No 1384/94 (OJ L 152, 18. 6. 1994, p. 1) confirming Regulation (EC) No 371/94 (OJ L 48, 19. 2. 1994, p. 10).

C. DUMPING

1. Preliminary remark

(11) In the initial investigation the dumping margin was calculated on the basis of the best selling models which accounted for more than 70 % of the exporter's total transactions to the Community. Consequently, the calculation in this investigation was also based on best-selling models accounting for more than 70 % of the export volume.

In their comments to the respective disclosure letters, Rubycon and Farad claimed that it would have been more appropriate to use a different set of transactions. In particular, Rubycon claimed that — instead of relying on quantities — 70 % of the export turnover should have been used, whereas Farad proposed to use a completely different set of transactions in order to avoid the risk that the exporter only increases its export prices for certain best-selling models.

The Council noted, however, that the Commission was neither provided with, nor did it otherwise receive information indicating a 'change of circumstances' within the meaning of Article 11 (9) of the Basic Regulation which would suggest that a change in methodology for the determination of the export prices is warranted. Therefore, it was considered appropriate — as in the initial investigation — to rely on the models accounting for 70 % of Rubycon's export volume.

2. Normal value

(12) As regards the determination of the normal value, two types of best-selling models have been distinguished.

For models which were sold in sufficient quantities and in the ordinary course of trade during the investigation period on the Japanese domestic market, normal values were based on the (profitable) domestic sales prices in accordance with Article 2 (2) and (4) of the Basic Regulation.

(13) For all other models, for which no or insufficient domestic sales in the ordinary course of trade were made during the investigation period, normal values were constructed in accordance with Article 2 (3) of the Basic Regulation. In this respect, normal values were calculated by adding up cost of manufacturing, selling, general and administrative domestic (SGA) expenses and a reasonable amount of profit, calculated on the basis of the weighted

average profit margin of Rubycon achieved on its profitable domestic sales of LAECs. The cost of manufacturing reported by Rubycon was corrected since it appeared that the company had not provided the actual purchase price for a certain part used in the production of LAECs which was subject to outside processing.

3. Export prices

(14) As regards the determination of the export price, a distinction was drawn between sales to related and unrelated parties in the Community.

In accordance with Article 2 (8) of the Basic Regulation, export prices of sales to unrelated companies were determined on the basis of prices actually paid for the products sold for export to the Community.

(15) In the case of export sales to Rubycon UK, the related importer, export prices were constructed on the basis of resale prices to the first independent purchaser, duly adjusted to take account of all actual costs incurred between importation and resale. In addition, an adjustment was made for a profit margin of 5 % which was considered a reasonable percentage and which is the same as that used in the initial investigation in accordance with Article 11 (9) of the Basic Regulation. As for the profit margin, it was noted that data received from the two importers that made themselves known in this investigation could not be used since one is a non-cooperating party, whereas the other does not resell the product concerned.

(16) Anti-dumping duties paid upon importation were deducted as a cost in accordance with Article 2 (9) of the Basic Regulation when constructing the ex works export prices since no conclusive evidence pursuant to Article 11 (10) of the Basic Regulation was provided in the course of the investigation showing that the anti-dumping duties were duly reflected in the subsequent selling prices of the customers of Rubycon UK in the Community.

(17) Finally, it was noted that part of Rubycon's products were sold to customers in the Community producing under the regime of inward processing relief. These export transactions under inward processing relief were taken into account in the calculation of Rubycon's export price. Rubycon contested this approach.

In this respect, it was considered that the exporter does not necessarily know for all transactions whether its customers release the models under inward processing relief into free circulation at a later stage or whether finished goods containing Rubycon's LAECs are reimported into the Community at a later stage.

In addition, sales of LAECs to companies using the inward processing relief may well contribute to the injury caused to Community producers as they reduce outlets which could otherwise be available to them. This is not contradicted by the requirements of Article 552 of Commission Regulation (EEC) No 2454/93 [1] containing provisions operating the inward processing authorization according to the Community Customs Code. In particular, it was found that the 'economic conditions' to be fulfilled when granting the authorization to operate under inward-processing relief can — in a significant number of instances — be satisfied without (in depth) verification of whether comparable goods are actually produced in the Community. In this respect it was also noted that Rubycon had, despite a request from the Commission, not provided sufficient information showing why Rubycon or its customers had received the respective authorization. Consequently, it cannot be excluded that in the present case Community producers were deprived of sales opportunities otherwise available to them.

Finally, it was noted that the inclusion of export transactions relating to inward processing is in line with the Basic Regulation which provides in its Article 1 (2) that a product is considered as being dumped 'if its export price to the Community' (as opposed to its release into free circulation in the Community) is less than its normal value.

Consequently, the Council concluded that the inclusion of export transactions relating to inward processing relief is justified for this investigation.

4. Comparison

(18) Normal values were compared with export prices at an ex-factory level. As far as differences in conditions and terms of sale are concerned, allowances were granted in accordance with Article 2 (10) of the Basic Regulation for delivery and payment terms.

[1] OJ L 253, 11. 10. 1993, p. 1. Regulation as last amended by Regulation (EC) No 1427/97 (OJ L 196, 24. 7. 1997, p. 31).

(19) Claims for adjustments for salesmen's salaries and advertising costs could not be granted since it was not demonstrated that price comparability of normal value and export price was affected.

5. Dumping margin

(20) The comparison of weighted average normal values with weighted average export prices showed the existence of dumping. Expressed as a percentage of the free-at-Community-frontier price, the weighted average dumping margin amounted to:

— Rubycon: 4,2 %.

D. NEW LEVEL OF DUTY

(21) The dumping margin established in the current review is lower than the dumping margin found in the initial investigation, which formed the basis of the duty rate. Since no clear indications were received or found showing that dumping would recur at a higher level once the review has been finalized, the Council concludes that Regulation (EEC) No 3482/92 should be amended in respect of Rubycon Corporation, Ina Nagano. The new duty rates amounts to 4,2 %.

(22) This review does not affect the date on which Regulation (EEC) No 3482/92 expires, pursuant to Article 11 (2) of the Basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 (2) of Regulation (EEC) No 3482/92 is hereby amended as follows:

The figure in the rate of duty column of '30,1 %' relating to Rubycon Corporation, Ina Nagano, shall be replaced by '4,2 %'.

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 Brussels, 19 December 1997.

For the Council

The President

F. BODEN