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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 802/97

of 29 April 1997

terminating the anti-dumping proceeding concerning imports of ball bearings with a greatest external diameter exceeding 30 mm 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 consultations within the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In June 1994, the Commission received a request for an interim review of the definitive anti-dumping measures imposed by Council Regulation (EEC) No 2849/92 of 28 September 1992 modifying the definitive anti-dumping duty on imports of ball bearings with a greatest external diameter exceeding 30 mm (hereinafter referred to as 'LBBs') originating in Japan imposed by Regulation (EEC) No 1739/85 [2]. This request was lodged by the Federation of European Bearing Manufacturers' Association (FEBMA) on behalf of Community producers whose collective output was stated to constitute a major proportion of total Community production of LBBs.

(2) The request asserted that the anti-dumping measures in force are not or are 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 an interim review under Article 11 (3) of Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community [3] the Commission published on 23 March 1995 [4] a notice of initiation of an interim review of the anti-dumping measures applicable to imports of LBBs originating in Japan.

(4) The Commission officially advised the Community producers, the importers and the Japanese producers 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 was from 1 January 1994 to 31 December 1994. For the analysis of the trends of the factors examined for the purposes of establishing whether the Community industry suffered injury caused by the imports in question the period from 1 January 1991 to 31 December 1994 was used.

(7) For the analysis of injury and in order to ensure comparability of the data collected for the period mentioned in Recital 6, data pertaining to the

[1] OJ No L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96, (OJ No L 317, 6. 12. 1996, p. 1).
[2] OJ No L 286, 1. 10. 1992, p. 2.
[3] OJ No L 349, 31. 12. 1994, p. 1, replaced by Regulation (EC) No 384/96.
[4] OJ No C 71, 23. 3. 1995, p. 3.

Community of Fifteen was applied even for the period prior to the enlargement of the Community to include Sweden, Finland and Austria.

(8) 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 were mainly caused by the high number and degree of diversity of the types within the product investigated.

(9) The Community industry, on behalf of which the request for an interim review was lodged, consists of the following producers:

— SKF France SA (France),
— SKF Industrie SpA (Italy),
— SKF Espanola SA (Spain),
— SKF Deutschland GmbH (Germany),
— SKF (UK) Ltd (United Kingdom),
— FAG Kugelfischer (Germany),
— FAG Cuscinetti SpA (Italy),
— Umbra Cuscinetti SpA (FAG) (Italy),
— ROL Rolamentos Portugueses SARL (Portugal), and
— SNR Roulements (France).

(10) During the investigation period, the following companies exported LBBs from Japan to the European Community and cooperated with the Commission in the review investigation:

— Sapporo Precision Ltd,
— NTN Corporation Ltd,
— Nankai Seiko Co., Ltd,
— Nachi-Fujikoshi Corp.,
— Koyo Seiko Ltd,
— NSK Ltd,
— Inoue Jikuuke Kogyo Ltd,
— Izumoto Seiko Co., Ltd,
— Nakai Bearings Co., Ltd,
— Tottori Yamakei Bearing Seisakusho Ltd,
— Wada Seiko Ltd,
— Fujino Iron Works Ltd, and
— NSK Micro Precision Ltd.

(11) The following unrelated importer cooperated with the Commission in the present investigation: ISO Import Standard Office (France).

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

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(13) The product under consideration is ball bearings with a greatest external diameter exceeding 30 mm falling within CN code No 84821090 originating in Japan. The principal application for LBBs is as intermediary products used in the assembly of products such as motor vehicles, electrical equipment, machine tools, construction, aerospace, farming and military equipment.

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

(15) It was found that LBBs produced in Japan, sold domestically and exported to the Community and LBBs produced by the 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

(16) For the purposes of this Regulation, in the same way as for Regulation (EEC) No 2849/92 (Recitals 24 and 25), the Japanese owned companies producing in the Community are 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 companies are related to exporters from Japan of the product under investigation. The companies sell all their production to the sales subsidiaries located in the Community and equally related to exporters from Japan and which are also involved in selling imported LBBs originating in Japan. It is considered that in those circumstances the producing companies located in the Community might therefore benefit from any unfair business practices. In such circumstances, the producers were not considered to be behaving as normal Community producers, but rather as a complementary source of supply for exporters accused of practising dumping.

(17) One of the Community producers mentioned above 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 Community industry as determined by the complaint and thus from the Commission's injury determination in connection

with the present investigation. For the remainder of this analysis, the term Community industry refers to the cooperating Community producers which supported the complaint, whose collective output of LBBs constitutes a major proportion of total Community production within the meaning of Article 4 (1) of Regulation (EC) No 384/96.

D. INJURY

Consumption

(18) Between 1991 and 1994, the consumption of LBBs in the European Community of fifteen increased from around 409 million pieces to around 513 million pieces, i.e. by around 25 %. The above expansion of the market is the result of the influence of the general business cycle on the LBB market during which the size of the LBB market varies according to the general level of activity on the part of the users of LBBs.

Volume and market share of imports

(19) Between 1991 and the investigation period, imports of LBBs originating in Japan, in tonnes, decreased from 10 225 tonnes to 7 872 tonnes, i.e. by 23 %. The sales in the Community of LBBs originating in Japan, measured in pieces, decreased from 30,6 million pieces to 29,8 million pieces, i.e. by 2,3 % in the same period.

(20) 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. The decrease was from a 7,7 % market in 1991 to a 5,9 % market share in 1994.

Prices of imports

(21) The prices charged for certain types by a representative selection of the Japanese producers that had submitted data on sales prices were compared with the prices charged for identical types by the Community producers, by category of customer in four Member States (Germany, the United Kingdom, France and Italy). Given their overall size and in line with past investigations concerning ball or roller bearings, these markets were considered as being representative for the situation in the entire Community. Based on this analysis, it was found that there is a certain amount of undercutting by Japanese imports as was determined in Regulation (EEC) No 2849/92 (Recital 28). However, it was not considered appropriate to draw any conclusions 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, as in Regulation (EEC) No 2849/92, no individual margins for price undercutting have been established for each company involved.

The situation of the Community industry

Sales and market shares

(22) The sales of LBBs manufactured in the Community by the Community industry increased from 190 million pieces to 200 million pieces between 1991 and the investigation period, thus by 5,3 %. The resulting market share of the Community industry decreased in the same period from 46,6 % to 39,1 % reflecting the strong increase in consumption.

Prices

(23) The Community industry has claimed that the 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 LBB producers to follow the prices downwards in order to defend their market shares at great financial expense. According to the Community industry, this undercutting has prevented it from obtaining price increases during 1994 which was a period of up-turn after a period of recession.

(24) With regard to the evolution of prices between 1991 and the end of the investigation period (1994) in the Community of the LBBs sold by the Community producers, this was analysed in detail per category of customer in Germany, the United Kingdom, France and Italy for types the turnover of which represented 50 % of their total turnover in the Community. On this basis, it was found that, between 1991 and 1994, prices decreased on average (sales to all categories of customers) by 1,74 %. Between 1993 and 1994, prices decreased by 0,17 %. On a per category of customer basis, for sales to large industrial manufacturers, which represent a majority of total turnover of the Community producers, the decrease between 1991 and 1994 was of 1,49 % and by 0,16 % between 1993 and 1994. For sales to distributors, there was a price decrease between 1991 and 1994 of 2,33 % and 0,18 % between 1993 and 1994.

(25) Given the fact that the Community industry's sales volumes increased, thus reducing its cost of production, the stable prices benefited the Community industry. In any way, it is considered that the very limited price undercutting did not exert a materially downward price pressure on the Community industry. In support thereof the Commission found that the weighted average price of LBBs of Japanese origin sold in the Community increased notably during the period under investigation of the determination of injury.

Profitability

(26) According to the Community industry, the price undercutting and the price evolution caused thereby had significant effects on its financial results. However, an analysis of the data submitted by the Community producers in connection with the present review shows that, on the contrary, the profitability specifically relating to the product under investigation, net of any extraordinary income or cost item, developed from a loss of 12 % in 1991 to a profit of 4 % in 1994, thus showing a recovery in 1994.

Production, capacity and capacity utilization

(27) Between 1991 and 1994, production of the Community industry increased from 216 million pieces to 262 million pieces, i.e. by 20 %. In the same period, the capacity of the Community industry, expressed in tonnes, decreased by 4,6 % and capacity utilization, also when expressed in tonnes, decreased slightly from 76,9 % to 76,2 %.

Employment

(28) Between 1991 and the investigation period, employment in the Community industry decreased from 9 238 to 6 482 employees, i.e. by 30 %. It should be noted that during the investigation it appeared that significant restructuring efforts had been undertaken by most of the Community producers during the period under consideration to increase productivity in general. Further to public statements made by major Community producers, it is considered that this restructuring was necessary to overcome structural deficiencies and to increase productivity in the long term. A comparison of the development of capacity, capacity utilization and production shows that this was accomplished — a fact which is reflected in the improved profitability.

Conclusion on injury

(29) An analysis of the abovementioned injury factors such as the Community industry's profitability, production, and sales shows that these demonstrate a positive trend whilst factors such as employment, capacity and capacity utilization show a negative development. As to profitability, the described trend shows a certain recovery of the Community industry. It illustrates, however, that the Community industry has not yet fully recovered from the past precarious situation.

E. CAUSALITY

(30) The Community industry has argued that the imports from Japan have had an injurious impact on its results, i.e. that these allegedly would have been better if it had not been forced to align its prices downwards in order to meet the competition of those of the Japanese exporters.

(31) In accordance with the provisions of 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 Regulation (EC) No 384/96. 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.

(32) In this regard, firstly, the detailed analysis of the prices applied by the Community producers over the period under consideration, as outlined above, demonstrates that the imports in question did not have any material effects on the prices applied by the Community producers and thus not on their financial results nor on any of the other factors listed above.

(33) Secondly, it should be recalled that imports from Japan have decreased both in absolute terms and in terms of market share during the period under investigation. It is acknowledged that the market share of the Community industry also decreased, but the decrease in the market share of the Japanese imports was steeper in percentage terms than that of the Community industry. It is therefore concluded that, contrary to the allegations of the Community industry, it did not lose any market share to Japanese imports.

(34) Thirdly, the entire period of investigation was characterized by significant imports from countries other than Japan, the market share of which increased from a market share of 25 % in 1991 to a market share of 33,4 % in 1994.

(35) Fourthly, the share of Japanese companies producing in the Community and affiliated to the exporters concerned by the present proceeding was significant throughout the period increasing from 19 % in 1991 to 20,9 % in 1994 and substantially higher than the imports concerned.

(36) Fifthly, the Community industry has argued that, weakened by past dumping, the Community industry was unable, in a period of economic up-turn, to meet the demand of its customers and that in order to invest in new capacity, the Community industry would require a substantial higher return on sales than what was registered during the investigation. However, it is considered as 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 the more so as the volume of these imports decreased more than the capacity restriction of the Community industry.

(37) Finally, regarding the decrease in employment, it should be noted that during the investigation it appeared that significant restructuring efforts had been undertaken to increase productivity in general by most of the Community producers during the period under consideration. Further to public statements made by major Community producers, it is considered that this restructuring was necessary to overcome structural deficiencies and to increase productivity in the long term. A comparison of the development of capacity, capacity utilization and production shows that this was accomplished — a fact which is reflected in the improved profitability.

Conclusion on causation

(38) 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 an interim 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 third country imports and Japanese production in the Community.

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

(39) 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 of material within the meaning of Article 3 (6) of Regulation (EC) No 384/96.

(40) 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. The Community industry bases its arguments on the following considerations: firstly, that imports from Japan increased, in absolute terms, after the investigation period and that these were further depressing or suppressing prices. In spite of the data submitted by the Community industry, it cannot be concluded on the basis of the facts available that any increased import volumes will affect the trend in the development of market shares and prices of the Community industry to a material extent. Secondly, that the imports in question will have a continuing detrimental impact irrespective of their relatively low market share and the significant market shares of the Japanese producers located in the Community. In this respect, it should be recalled that, firstly, there is a decreasing market share of Japanese imports, secondly, there are increasing imports from countries other than Japan and, thirdly, a significant and stable market share of Japanese production facilities is located in the Community.

(41) Given these economic trends and the above conclusion that the impact of Japanese imports on the situation of the Community industry during the period under investigation was not material and that the Community industry has experienced a certain recovery in its financial results, it is the position of the Commission that it is not likely that the repeal of the anti-dumping measures currently in force would create a situation in which a materially injurious impact of these imports would recur.

(42) As to the circumstances of the exporters, official statistics demonstrate that production capacity for bearings in Japan remained stable from 1990 to 1994 and increased subsequently in relation to the recovery of demand world-wide thus supporting the above conclusion.

(43) With regard to the market conditions it should be reiterated the situation for the Community industry during 1994 showed a certain recovery in the market for LBBs. This led to increased profitability. 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 repeal of the current measures.

G. DUMPING

(44) 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 on the above analysis and would consequently not alter the conclusions reached.

H. CONCLUSION

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

(46) 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 reverse its conclusions as mentioned above. Certain Member States raised objections to this course of action,

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping proceeding concerning imports of ball bearings with a greatest external diameter exceeding 30 mm falling within CN code No 84821090 originating in Japan is hereby terminated and the anti-dumping measures imposed by Regulation (EEC) No 2849/92 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, 29 April 1997.

For the Council

The President

H. VAN MIERLO