COUNCIL REGULATION (EC) No 2041/2000

of 26 September 2000

amending Regulation (EC) No 5/96 imposing definitive anti-dumping duties on imports of microwave ovens originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand

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. **Previous procedure**

(1) Following an investigation initiated in December 1993 (hereinafter referred to as the 'original investigation') under Article 7 of Regulation (EEC) No 2423/1988 [2], the Council imposed definitive anti-dumping duties in January 1996, pursuant to Regulation (EC) No 5/96 [3], on imports of microwave ovens ('MWOs') originating, inter alia, in the Republic of Korea. The duties applied to all Korean exporting producers and ranged from 3,3 % to 24,4 %.

(2) In December 1996, the Commission initiated an investigation into whether these duties had been absorbed by the exporting producers [4]. Commission Decision 98/225/EC [5] terminated this review, however, in March 1998 without changing the anti-dumping measures in force.

2. **Request for a review**

(3) A request for a partial interim review of the anti-dumping duty in force against it was made in February 1999 by the Korean exporting producer, LG Electronics Inc. The request was limited in scope to an examination of whether the continued imposition of the duty at its current level was necessary to offset dumping for the company concerned.

(4) The company alleged that the circumstances had changed significantly in its particular case subsequent to the imposition of the original measure due to, inter alia, reductions in its manufacturing costs leading to lower normal values and that this had led to a situation where the duty was no longer necessary to offset dumping. The company also claimed that the lower costs were the result of structural changes of a lasting nature and that there would be no likelihood of dumping recurring in the future.

3. **Investigation**

(5) Having determined, after consulting the Advisory Committee, that the evidence was sufficient, the Commission initiated a partial interim review [6] (hereinafter referred to as 'the review'), pursuant to Article 11(3) of Regulation (EC) No 384/96 (hereinafter referred to as the 'basic Regulation').

(6) This notice also allowed other exporting producers in Korea to request a review of their rates of anti-dumping duty, provided that they could submit, within the deadline specified therein, sufficient evidence that the continued imposition of the duty imposed against them at the current level was no longer necessary to offset dumping.

(7) Only one Korean exporting producer, Daewoo Electronics Co. Ltd, made such a request within the deadline and submitted the prima facie evidence required. Accordingly, this company was admitted to the review.

(8) The Commission also officially advised the representative association of the producers in the Community of the initiation of the review and the representatives of the exporting country. All parties directly concerned were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(9) In order to obtain the information deemed necessary for its investigation and for the purposes of determining whether dumping was likely to continue or recur, the Commission sent questionnaires to the two Korean exporting producers concerned and, where appropriate, to their subsidiaries in the Community.

(10) Visits to verify the replies to the questionnaires were carried out at the premises of the following companies:

Producers in the Republic of Korea:

— LG Electronics Inc, Seoul ('LGE')

— Daewoo Electronics Co. Ltd, Seoul ('DWE')

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).
[2] OJ L 209, 2.8.1988, p. 1.
[3] OJ L 2, 4.1.1996, p. 1.
[4] OJ C 19, 18.1.1997, p. 3.
[5] OJ L 85, 20.3.1998, p. 29.
[6] OJ C 167, 15.6.1999, p. 5.

Importers in the Community:

— Daewoo Electronics Benelux b.v, Dordrecht, Netherlands

— Daewoo Electronics S.A, Paris, France

— Daewoo Electronics Sales UK Ltd, Wokingham, UK

(11) The investigation concerning whether dumping had continued following the imposition of the definitive duties in the original investigation was based on information pertaining to the period from 1 April 1998 to 31 March 1999 (the 'review investigation period').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(12) The product under consideration in this review is the same as in the two previous investigations, namely microwave ovens ('MWOs'), currently classifiable under CN code 8516 50 00.

2. Like product

(13) As in the two previous investigations, it was established that MWOs produced in Korea and sold domestically had sufficiently similar characteristics and functions to those exported to the Community for them to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Preliminary remark

(14) The purpose of the review is, pursuant to Article 11(3) of the basic Regulation, to determine whether or not the continued imposition of the anti-dumping duties against each exporting producer is necessary to offset dumping.

(15) This is done by determining whether either company had continued to dump after the adoption of the anti-dumping measures in the original investigation and whether there would be a likelihood of the dumping continuing or recurring if the anti-dumping duties were to be removed or varied.

(16) Accordingly, an examination was first made as to whether the two Korean exporting producers were dumping during the review investigation period.

2. Normal value

(17) In order to establish normal value, it was first determined whether the total domestic sales of MWOs of each exporting producer concerned were representative in terms of volume, that is to say, whether they accounted for 5 % or more of the total sales volume of MWOs exported by each producer to the Community (cf Article 2(2) of the basic Regulation). In this regard, it was found that both exporting producers had sold substantially more MWOs in Korea than to the Community.

(18) It was then determined whether the total domestic sales of each MWO model which was identical or equivalent to the model exported to the Community constituted 5 % or more of the export sales volume of that model.

(19) As one exporting producer was found to have made sufficient domestic sales of models equivalent to those exported to meet the 5 % test, it was then established whether these sales had also been made in the ordinary course of trade (cf. Article 2(4) of the basic Regulation). It was found that the volume of domestic sales above unit production cost represented at least 80 % of the sales of each model, therefore normal value was established on the basis of the weighted average price actually paid for all domestic sales of the model concerned.

(20) The other exporting producer was found to have made no domestic sales of models which were identical or equivalent to those models exported to the Community. Consideration was therefore given to establishing normal value for this company on the domestic selling prices of the other cooperating producer in Korea (cf. Article 2(1) of the basic Regulation). However, given the often significant differences in the physical and technical characteristics of the MWOs of the two exporting producers and the need to make substantial adjustments to prices to take account of such differences, this approach was considered to be neither reasonable nor practical.

(21) Instead, normal value was constructed on the basis of the cost of manufacturing incurred by the second producer for each of the exported models in question, plus a reasonable amount for selling, general and administrative costs ('SG&A costs') and profit (cf. Articles 2(3), 2(5) and 2(6) of the basic Regulation).

(22) The SG&A costs added to the cost of manufacturing of the exported models concerned were based on such costs incurred by the exporting producer with regard to all its sales of MWOs on the Korean market which, as mentioned above, were found to be representative for this purpose.

(23) As concerns the profit margin used, this was calculated on the basis of the weighted average profit margin of the company for those MWO models sold in Korea in the ordinary course of trade in sufficient quantities.

3. **Export price**

(24) In cases where export sales were made directly to independent importers in the Community, export prices were determined on the basis of the prices paid or payable by these unrelated importers (cf. Article 2(8) of the basic Regulation).

(25) However, where exports were made to importers in the Community which were related to the exporting producer in Korea, the prices charged were considered unreliable (cf. Article 2(9) of the basic Regulation). Instead, export prices were constructed on the basis of the price at which the product was resold by the related importer to an independent buyer, adjusted for all costs incurred between importation and resale (including customs duties and anti-dumping duties paid), and a reasonable margin for profit.

(26) In the absence of any new information that profitability in this business sector had changed, where export prices were constructed, it was considered reasonable to retain the profit margin of 5 % used in the two previous investigations.

4. **Comparison**

(27) For the purpose of ensuring a fair comparison, and in accordance with Article 2(10) of the basic Regulation, adjustments were made as appropriate for each exporting producer to allow for differences claimed in respect of physical characteristics, import charges, discounts, rebates, level of trade, transport and other related costs, packing, credit and after-sales costs, commissions and currency conversions costs, which were found to affect prices and price comparability.

(28) The ex-factory normal values established by model for each company were compared at ex-factory level to the export prices established by model of each company on a weighted average to weighted average basis (cf. Article 2(11) of the basic Regulation).

5. **Dumping margin**

(29) The comparison between the normal values and the export prices, expressed as a percentage of the cif, free-at-Community-frontier price, showed the following dumping margins:

LG Electronics Inc.	0,0 %
Daewoo Electronics Co. Ltd	0,0 %

D. **LIKELIHOOD OF RECURRENCE OF DUMPING**

1. **Introductory remark**

(30) Although it was established that neither exporting producer involved in the review investigation was dumping during the review investigation period, as mentioned previously, a reasoned forecast also had to be made as to whether dumping would recur if the anti-dumping duties imposed against either of these companies were to be removed or varied.

(31) In this regard, the question of spare production capacity in Korea was considered, as well as the MWO sales trends of the two companies in Korea, the Community and export markets other than the Community. In addition, an examination of whether such sales to non-Community markets were non-profitable or dumped was carried out, together with an analysis of the possible incentives for the two exporting producers to dump again on the Community market.

2. **Capacity utilisation**

(32) Analysis of data provided, together with information received and verified during the on-spot visits, showed that the MWO production facilities in Korea of the two exporting producers concerned were operating almost to their maximum installed capacities, with little scope for extra production.

3. **Sales**

a) *Volume*

(33) The investigation also established that between 1997 and the review investigation period, LGE and DWE both suffered declining sales volumes in Korea, apparently due to oversupply and falling demand on that market.

(34) As concerns exports, LGE reduced its sales volumes to the Community following the imposition of the provisional and definitive anti-dumping measures. The company therefore needed to find alternative markets for its Korean-made MWOs. In this regard it was successful, as its export sales volumes to countries outside the Community increased almost to the same levels as those previously achieved in Korea and the Community.

(35) With regard to DWE, it was noticeable that the company's exports to non-Community markets declined slightly between 1997 and the review investigation period; however, unlike LGE, it increased its exports to the Community following the imposition of provisional anti-dumping duties to a point where such sales almost entirely offset the company's reduced sales volumes in Korea and export markets outside the Community.

b) *Prices*

(36) In order to assess if there would be any incentive for the companies to switch their exports from non-Community countries to the Community at dumped prices if the anti-dumping duties were to be removed or varied, a price analysis was also made in respect of a representative sample of MWO models manufactured in Korea and exported by each company to such markets.

(37) For almost all the models selected it was established that the average sales price to independent customers in countries outside the Community was above the cost of production of the particular model concerned. Taken overall, the level of profit achieved on these MWO models was found to be significant.

(38) In addition, using the general methodology outlined above concerning whether or not exports to the Community were dumped in the review investigation period, an examination was also carried out as to whether sales to non-Community destinations were at dumped levels. Significantly, such an analysis also failed to show the presence of dumping on these other markets by either of the two companies concerned.

4. **Conclusion concerning likelihood of recurrence of dumping**

a) *LGE*

(39) With regard to its reasons for requesting the review, LGE has not hidden the fact that it would export higher quantities of MWOs to the Community if the current anti-dumping duty were to be reduced. The issue, therefore, which has had to be assessed is whether such increased exports would continue to be at non-dumped levels.

(40) In making such an assessment, it is necessary to take into account whether the company will make use of its limited spare production capacity in Korea to source such sales and/or divert production and sales of MWOs currently exported to non-Community countries.

(41) In this regard, the investigation showed that LGE's Korean factory is now geared towards producing so called 'high-end models', which are more sophisticated and contain more technical features than cheaper, higher volume 'low-end' MWOs (which it also used to produce in Korea in the original investigation period). An examination of the dumping calculations in the original investigation was carried out within the framework of the current investigation revealed that LGE's high-end MWO models with high export prices tended either not to be dumped when exported to the Community, or dumped at much lower levels than the low-end models.

(42) This trend continued into the review investigation period, where the findings of the investigation, as determined above, showed that the high-end MWO models produced by LGE were not being sold on the Community market at dumped price levels.

(43) In addition, if the company were to increase production in Korea, it is considered that further economies of scale could be achieved, leading to lower unit production costs, with even less likelihood of dumping recurring in the future.

(44) With regard to whether LGE has any incentive to switch exports of Korean-made MWOs from other third countries to the Community if the anti-dumping duty were removed or varied, it should be recalled that such exports to these countries were both profitable, and at non-dumped levels. Although the possibility exists that the company might divert such MWOs to the Community, in order for them to be dumped, LGE would have to reduce their prices significantly and, therefore, their profits, a course of action for which there seems little economic justification.

(45) In addition, the fact that LGE is a major producer of MWOs in the Community must also be taken into account when assessing the likelihood of the company dumping again in the Community. Given that its production in the Community currently accounts for between 10 and 20 % of all MWOs sold in the Community with EU origin, it is considered that LGE will be less inclined in the future to destabilise prevailing prices or otherwise cause injury to the Community market, in which it is now a major player, by exporting from Korea at low prices.

(46) In view of all the above, it is therefore considered unlikely that the company's future exports to the Community would be at dumped prices.

b) *DWE*

(47) As with LGE, the question which the Commission has had to consider is whether DWE's sales volumes of MWOs at current, or even increased levels, would continue to be at non-dumped price levels if the current anti-dumping duty were to be removed or varied.

(48) Significantly, the investigation showed that the company expanded its export sales to the Community at profitable, non-dumped price levels, at a time when it had an anti-dumping duty in force against it. In addition, it maintained high capacity utilisation in Korea and also made profitable, non-dumped export sales on non-Community markets.

(49) As also concerns the question of whether or not there would be a likelihood of recurrence of dumping by DWE in the future if the anti-dumping duty currently in force against it were to be removed or varied, this company is also among the largest producers of MWOs in the Community with production and sales volume levels in the Community of MWOs with EU origin of a similar magnitude to LGE.

(50) In conjunction with the apparent lack of economic incentives to revert to its previous dumping practises, it is considered that DWE will, like LGE, be less inclined in the future to dump from its Korean operation and destabilise or otherwise cause injury to the Community market, in which it has a major economic presence.

E. **INJURY AND COMMUNITY INTEREST**

(51) Given that the original request for a review by LGE (and subsequent application to participate in the review by DWE) in the current investigation was limited to an examination and possible revision of the dumping margin applicable to each company under Article 11(3) of the basic Regulation, it was not necessary to carry out an examination of injury or Community interest.

F. **CONCLUSION**

(52) On the basis of the above facts and considerations, and in view of the information available at the present time, it is considered reasonable to conclude that dumping by LGE or DWE is unlikely to recur if the anti-dumping duties currently imposed against the two companies were to be reduced to the level of the dumping margins established for each of them in the present review, namely 0,0 %. In any event, the two exporting producers may, in the future, be subjected to further review, if such a course of action is considered necessary.

(53) All parties concerned were informed of the essential facts and considerations on the basis of which the modification to the existing duties for the two exporting producers would be based. No submissions were made, however, by any of these parties.

(54) This review does not affect the date on which Regulation (EC) No 5/96 will expire (cf. Article 11(2) of the basic Regulation), nor the rights of importers to request reimbursement of anti-dumping duties collected (cf. Article 11(8) of the basic Regulation),

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 1(2) of Regulation (EC) No 5/96 shall, with regard to the Republic of Korea, be replaced by the following:

'Country	Products manufactured by	Rate of duty (%)	TARIC additional code
Republic of Korea	— Daewoo Electronics Co. Ltd	0,0	8829
	— LG Electronics Inc.	0,0	8830
	— Korea Nishin Co. Ltd	24,4	8831
	— Samsung Electronics Co. Ltd	3,3	8832
	— Other companies	24,4	8833'

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, 26 September 2000.

For the Council
The President
C. TASCA