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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 3 December 1996

terminating the anti-dumping proceeding concerning imports of tapered roller bearings originating in Japan

(97/27/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 23 thereof,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Community⁽²⁾, as last amended by Regulation (EC) No 522/94⁽³⁾, and in particular Article 9 thereof,

Following consultations within the Advisory Committee as provided for by the said Regulation,

Whereas:

A. PROCEDURE

- (1) In November 1993, the Commission received a complaint 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 tapered roller bearings (hereinafter referred to as 'TRBs').

- (2) The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding. After consultation within the Advisory Committee, the Commission accordingly announced, by notice published in the *Official Journal of the European Communities* (*), the initiation of an anti-dumping proceeding concerning imports into the Community of tapered roller bearings originating in Japan.
- (3) 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.
- (4) The Commission sought and verified all information it deemed to be necessary for the purpose of its determination.
- (5) The investigation period applied in the present proceeding 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 applied. 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.

⁽¹⁾ OJ No L 56, 6. 3. 1996, p. 1.

⁽²⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽³⁾ OJ No L 66, 10. 3. 1994, p. 10.

^(*) OJ No C 181, 2. 7. 1994, p. 7.

- (6) 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.
- (7) The Community industry consists of the following producers:
- FAG Kugelfischer Georg Schäfer KGaA (Schweinfurt, Germany),
 - SKF GmbH (Schweinfurt, Germany),
 - SKF Industrie SpA (Cascine Vica, Italy),
 - SKF Espagnola SA (Madrid, Spain),
 - Timken France (Colmar, France),
 - British Timken (Northampton, United Kingdom), and
 - Société Nouvelle de Roulements (Annecy, France).
- (8) During the investigation period, the following companies exported TRBs from Japan to the European Community:
- Koyo Seiko Co. Ltd (Osaka),
 - NTN Corporation (Osaka),
 - Nachi Fujikoshi Corporation (Tokyo),
 - NSK Ltd (Tokyo),
 - Maekawa Bearing Manufacturing Co. Ltd (Osaka), and
 - MC International Inc. (Osaka).
- (11) In Japan and in the Community, TRBs are mainly sold to two categories of customers, namely industrial users and distributors.
- (12) It was found that TRBs produced in Japan and exported to the Community and TRBs produced by the Community producers are alike in their physical characteristics and uses. They have therefore to be considered as a like product in accordance with Article 2 (12) of Regulation (EEC) No 2423/88.
- (13) In 1991, the Commission initiated, at the request of the Community industry, a separate anti-dumping proceeding concerning imports of Cups ⁽¹⁾ and in 1993 a definitive anti-dumping duty was imposed on this product ⁽²⁾.
- (14) In connection with the present investigation, the Community industry submitted arguments in favour of the Commission regarding TRBs and Cups as one product and thus merging the investigation under the present proceeding with the concurrent review of the anti-dumping measures applicable to imports of Cups originating in Japan ⁽³⁾. The Japanese producers supported this approach. However, in accordance with the reasoning set forth by the Court of First Instance of the European Community ⁽⁴⁾, the Commission maintains the position that TRBs and Cups constitute separate products, each of which can legally be the subject of a separate anti-dumping proceeding.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

- (9) The product covered by the complaint, and for which the proceeding was opened is tapered roller bearings, including cones and tapered roller assemblies, falling within CN code No 8482 20 00.
- (10) TRBs 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 TRB. The principal application for TRBs is in the automotive industry.

C. DEFINITION OF COMMUNITY INDUSTRY

- (15) One of the Community producers did not submit a satisfactory response to the Commission's questionnaire within the deadline set by the Commission. In view of the 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 TRBs constitutes a major proportion of total Community production within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

⁽¹⁾ OJ No C 2, 4. 1. 1991, p. 8.

⁽²⁾ OJ No L 9, 15. 1. 1993, p. 7.

⁽³⁾ OJ No C 292, 20. 10. 1994, p. 5.

⁽⁴⁾ Case T-166/94 Koyo Seiko Co. Ltd v. Council of the European Union. Judgment of 14 July 1995.

D. INJURY

Consumption

- (16) Between 1991 and the end of the investigation period, the consumption of TRBs in the European Community decreased from around 150 million pieces to around 135 million pieces, i.e. by around 9 %. The above contraction in the market is the result of the influence of the general business cycle on the TRB market during which the size of the TRB market varies according to the general level of activity on the part of the users of TRBs.

Volume and market share of imports

- (17) Between 1991 and the investigation period, imports, in tonnes, decreased from 5,8 thousand tonnes to 5 thousand tonnes, i.e. by 13,8 % and in the same period the sales thereof, in pieces, decreased from 11 million pieces to 8,5 million pieces, i.e. by 23 %.
- (18) In the same period the market share of imports of TRBs originating in Japan decreased from 7,4 % in 1991 to 6,2 % in the investigation period.

Prices of imports

- (19) The prices charged by the Japanese producers that had submitted data on prices were compared with the prices charged for types, which the interested parties considered as identical, by the Community producers, by category of customers, in four Member States (Germany, the UK, France and Italy) which were considered as being representative of the situation in the entire Community. On this basis price undercutting was found. The weighted average undercutting margin for those exporters that cooperated with the Commission in this regard, expressed as a percentage of the Community producers' turnover of the types in question, is around 13 %. Furthermore, the Commission's services have analysed the pricing behaviour on the part of the exporters for sales to the two categories of customers mentioned in recital 11 using the same methodology as described above. This analysis showed a trend of higher price undercutting on the part of the Japanese exporters for sales to distributors compared to sales to industrial users. This pricing behaviour refutes the allegations of the Community industry which had stated that the exporters concerned were more aggressive in the market segment most important to it, i.e. industrial users.

The situation of the Community industry

Market Shares

- (20) The market share of TRBs produced by the Community industry between 1991 and the end of

the investigation period (in pieces) decreased from 80,58 % to 75,52 %. Furthermore, the market share of TRBs manufactured by long established manufacturing facilities outside the European Community of twelve and related to the Community industry (mainly in Austria and the United States) increased from 6,17 % to 10,08 % in the same period.

Prices

- (21) It was found that the prices charged for TRBs by the Community industry in the European Community, expressed in ecu, decreased between 1991 and the end of the investigation period, on average for sales to all categories of customers, by 2,81 %. From 1993, the decrease was of 0,98 %. For sales to industrial users which represent the majority of the total turnover of the Community industry, the decrease between 1991 and the end of the investigation period was of 3,18 % and of 1,87 % from 1993. For sales to distributors, the evolution between 1991 and the end of the investigation period is that there was a price decrease of 0,88 % and an increase of 3,74 % from 1993.

Sales

- (22) Between 1991 and the investigation period, sales, in pieces, of TRBs manufactured in the Community, of the Community industry decreased by 14 %. Furthermore, as mentioned, sales of TRBs manufactured by long established manufacturing facilities in countries outside the Community of twelve and related to the Community industry and subsequently imported into and sold in the Community on the part of the Community industry increased significantly in the same period. Thus, if combined, the sales of the Community industry of TRBs decreased by 10 %, which is in line with the above percentage figure for the market contraction, but increased between 1993 and the investigation period by 8 %.

Profitability

- (23) As to the return on sales of the Community industry specifically relating to the product under investigation, this was negative during the period under consideration developing 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 %.

Production

- (24) Between 1991 and the investigation period, production of the Community industry decreased by around 11 %.

Capacity/capacity utilization, research and development and investment

- (25) The capacity of the Community industry decreased by 9,3 % and its capacity utilization was reduced by 2,2 percentage points. Research and development costs decreased in the same period by 62 % and new investments also decreased substantially.

Employment

- (26) As to employment in the Community industry, between 1991 and the investigation period, this decreased by around 27 %. However, 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.

Conclusion on injury

- (27) In the light of the above analysis, it is concluded that the Community industry suffered economic difficulties during the period under consideration. However, financial results, whilst still negative, improved considerably.

E. CAUSALITY

- (28) In accordance with the provisions of the basic regulation, the Commission 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. In this investigation, care was taken to ensure that the negative situation of the Community industry caused by other factors was not attributed to the imports concerned.

- (29) As mentioned, the market share of Japanese imports decreased from 7,4 % in 1991 to 6,2 % in the investigation period. This should be compared to the market share of TRBs manufactured in the Community by the Community producers of 80,58 % in 1991 and 75,52 % in the investigation period — and the fact that the Community industry imported significant quantities of TRBs from long-established related manufacturing facilities located in e.g. the US and Austria for resale in the Community. The market share of such imports ranged from 6,17 % in 1991 to 10,08 % in the investigation period. These imports registered the highest rate of import penetration when compared

to other third countries (which increased from 5,86 to 6,68 %) and reached a level higher than that of the Japanese imports both in absolute terms and in terms of market share.

- (30) In spite of the undercutting on the part of Japanese exporters, the market shares of the Community industry, combined with imports from long-established related manufacturing facilities for the reasons set forth above, remained virtually untouched over the entire period under investigation. The loss of market share of the Community industry is therefore mainly caused by its imports from the manufacturing facilities in third countries and thus self-inflicted. When assessing the impact of Japanese imports on the development of the market share of the Community industry over the period under consideration, including imports from related manufacturing facilities in third countries, the conclusion of the Commission is that this is not to be considered as material.

- (31) The Community industry argued that it was forced to align its prices to the lower prices, and price offers of the Japanese exporters, in order to defend its market share, with depression and suppression of prices and great financial expenses as a consequence, and that the Japanese exporters thus had a significant impact on the price level in the Community, in spite of their relatively low market share.

- (32) The existence and the level of the price undercutting for certain transactions in certain sales channels is not considered as decisive for the outcome of the present investigation. According to the provisions of the basic regulation, what matters is the impact thereof. In this regard, the Community industry submitted that the margin of price depression calculated by the Commission should be added a margin of 3 % representing the registered average increase in cost of production in the industry over the same period so as to reflect a margin of price suppression. The Community industry submitted that this price suppression is particularly important with regard to sales to the particular category of customers industrial users. It was submitted on the part of the Community industry that in the recession period (lasting from 1990 to early 1994) the Community industry defended its market share against the lower price offers of Japanese competitors. This was allegedly a necessary reaction of the Community industry during a period of recession, because any loss of volume and market share would have increased the unit costs in the TRB production and thus the losses suffered by the Community industry.

- (33) The Commission has indeed found that the prices decreased over the period from 1 January 1991 to 30 June 1994. However, if the Community industry had been forced to suppress its prices in order to maintain volumes and market shares, which in fact to a large extent was accomplished, increased financial losses would have been registered. The findings of the investigation demonstrated the opposite, i.e. an upswing in the results of the Community industry and this at a time where no anti-dumping measures were in force with respect to imports of the product under investigation.
- (34) In view of the foregoing, the Commission does not agree that the imports under investigation depressed or suppressed the prices of the Community industry to a degree which can be classified as material, especially in view of the fact that the period in question was characterized by a recession.
- (35) With regard to the pricing behaviour of the Japanese exporters, the undercutting on their part of prices charged by the Community industry for sales to industrial customers, which constitute the main category of customers of the Community industry, was found to be lower than that found for sales to distributors, the other category of customers. Thus, the weighted average percentage of undercutting was mainly comprised of higher undercutting on the part of the Japanese exporters for sales to distributors, whereas it should be noted that the limited price depression or suppression found showed the opposite pattern (i.e. it was higher for sales to industrial users than for distributors).
- (36) The Community industry also submitted that, due to the low price level, it had to reduce its capacity in the Community and investments during the reference period and this in order to lower the break-even point of the industry and thus to reduce its losses. This had led to a situation where the Community industry was not able to meet customer requests during the year 1995. In order to invest in new capacity, the Community industry would allegedly require a substantial higher return on sales than that was registered during the investigation.
- (37) However, the Commission is of the opinion that it is normal business behaviour to reduce costs and this 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 financing 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. 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.

- (38) A consideration of all the above factors leads the Commission to conclude that the impact of imports from Japan on the situation of the Community industry does not exist to a degree which enables it to be classified as material within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

F. THREAT OF INJURY

- (39) The Community industry claimed that imports from Japan constitute a threat of material injury within the meaning of Article 4 (3) of Regulation (EEC) No 2423/88 and have argued, and submitted data showing that, in particular, imports from Japan increased, in absolute terms, after the investigation period and argued that these were further depressing or suppressing prices.
- (40) It should be recalled that it has been established by the Commission that, during the period under investigation, the market shares of the Japanese exporters decreased and that the imports in question did not have any material impact on the prices applied by the Community industry during that period.
- (41) In spite of the data submitted by the Community industry, it cannot be concluded on that basis that any increased import volumes will affect the trend in the development of market shares and prices of the Community industry to an extent which would classify this as a materially injurious impact within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88, especially in view of the apparent upturn of the market after the period under consideration.
- (42) In addition, the Commission has no indication that production capacity or inventories in Japan have increased or will do so in the foreseeable future.
- (43) The Commission therefore considers that future material injury to the Community industry caused by Japanese imports is not clearly foreseeable nor imminent and that the adoption of anti-dumping measures on the basis of a threat of injury is not justified.

G. DUMPING

- (44) In view of the above conclusion, the Commission did not consider it necessary to analyse whether the imports in question were dumped or not since, even if they were dumped, this would not have any relevance on the above analysis and would consequently not alter the conclusions reached.

H. CONCLUSION

- (45) Under these circumstances, the proceeding should be terminated in accordance with Article 9 of Regulation (EEC) No 2423/88.
- (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. The Commission considered these representations, but concluded that these could not reverse its conclusions as mentioned above. Certain Member States raised objections to this course of action within the Advisory Committee.

HAS DECIDED AS FOLLOWS:

Sole Article

The anti-dumping proceeding concerning imports of tapered roller bearings falling within CN code No 8482 20 00 originating in Japan is hereby terminated.

Done at Brussels, 3 December 1996.

For the Commission

Leon BRITTAN

Vice-President