COUNCIL REGULATION (EEC) No 1739/85

of 24 June 1985

imposing a definitive anti-dumping duty on imports of certain ball bearings and tapered roller bearings originating in Japan

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Community [1], and in particular Article 12 thereof,

Having regard to the proposal submitted by the Commission after consultations within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. Provisional action

(1) The Commission, by Regulation (EEC) No 3669/84 [2], imposed a provisional anti-dumping duty on imports of ball bearings with greatest external diameter of more than 30 mm and of tapered roller bearings originating in Japan and manufactured or exported by Koyo Seiko Co. Ltd, Nachi-Pujikoshi Corporation (Nachi), Nippon Seiko KK (NSK) and NTN Toyo Bearing Co. Ltd.

(2) The Council, by Regulation (EEC) No 1034/85 [3], extended the period of validity of this provisional duty for a further period not exceeding two months.

B. Subsequent procedure

(3) Following the imposition of the provisional anti-dumping duty and within the one-month period provided for in Article 3 of Regulation (EEC) No 3669/84, the four exporters concerned requested and were granted an opportunity to be heard by the Commission and were informed in detail of the facts on which the Commission had based its preliminary finding of dumping.

(4) The same parties with the exception of NTN also requested a disclosure conference in order to be informed of the facts on the basis of which it was intended to establish the definitive dumping margin and these requests were granted. These parties were also granted a period within which they could make representations subsequent to these disclosure conferences.

(5) In addition to the investigations leading to the preliminary determinations, the Commission carried out further on-the-spot investigations at the premises of Nachi and NSK in Tokyo, Japan.

(6) Prior to the imposition of provisional duties, a certain number of smaller Japanese manufacturers and exporters had informed the Commission that they considered themselves concerned by the procedure and offered their cooperation. Questionnaires were sent to all these companies and on the basis of the replies received the Commission tentatively determined which of the companies were manufacturing the bearings under investigation and had exported them to the Community during the period of reference. This applied to the following companies, at the premises of which on-the-spot verifications were carried out :

— Asahi Seiko Co. Ltd, Osaka,

— FKC Bearing Co. Ltd, Osaka,

— Fujino Iron Works Co. Ltd, Osaka,

— Inoue Jikuuke Kogyo Co. Ltd, Osaka,

— Izumoto Seiko Co. Ltd, Osaka,

— Maekawa Bearing MFG, Co. Ltd, Osaka,

— Matsuo Bearing Co. Ltd, Osaka,

— Minamiguchi Bearing MFG Co. Ltd, Osaka,

— Nankai Seiko Co. Ltd, Osaka,

— Sapporo Precision Inc. Sapporo,

— Wada Seiko Co. Ltd, Osaka.

In the course of the investigation it appeared that Sapporo Precision Inc. is not a manufacturing company, but obtains nearly all of the bearings concerned by this investigation from Kita Nippon Seiko Co. Ltd, a production company which is majority owned by Sapporo Precision Inc., and is consequently considered to be effectively controlled by it. In view of this fact, for the purposes of the investigation the two companies were treated as a single economic entity.

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[1] OJ No L 201, 30. 7. 1984, p. 1.
[2] OJ No L 340, 28. 12. 1984, p. 37.
[3] OJ No L 112, 25. 4. 1985, p. 1.

All of these manufacturers and exporters were subsequently informed of the Commission's findings, and were given an opportunity to comment, of which opportunity some availed themselves.

(7) Within the time limit laid down by Article 3 of Regulation (EEC) No 3669/84, two independent importers requested to be heard and were granted a hearing, and the Commission subsequently sought information from another independent importer of the bearings in questions, namely Findling Wälzlager, Karlsruhe, Germany.

C. Normal value

(8) Normal value for those bearings subject to the provisional duty was finally established on the basis of the price paid by unrelated purchasers for like bearings sold in Japan, using the method which was used already for the purpose of the preliminary determination of dumping, taking into account new evidence submitted by the parties concerned.

One party contested the use of the combined weighted average of sales prices to unrelated purchasers where domestic sales were made directly by the manufacturer and through wholly-owned or controlled sales companies. It argued that in such cases the weighted average of the manufacturer's sales prices to unrelated customers and to its sales subsidiary should be used where these prices are comparable or, alternatively, normal value should be established on the basis of direct sales to unrelated customers by the manufacturer only. On the basis of the evidence made available to it, the Commission has not been satisfied that the prices and costs involved in the transactions between the manufacturer and its sales companies are comparable to those involved in transactions between the manufacturer and unrelated purchasers. Consequently, since the transactions between the manufacturer and its sales companies cannot be considered as being in the ordinary course of trade, normal value should, in accordance with Article 2 (3) (a) of Regulation (EEC) No 2176/84, be based on the comparable prices in the ordinary course of trade in the exporting country which, under the circumstances in question, are the prices paid by unrelated customers to the manufacturer and to its sales companies which constitute a single economic entity by virtue of the ownership or overall control exercised by the manufacturing company. It is considered that only when the sales made by the controlled sales companies are taken into account, the normal value thus established adequately reflects the full range of prices payable on the domestic market. The information made available by the manufacturer concerned shows that even though its principal sales company and its sales branches both sell to the whole range of domestic customers, the former sells to a proportionately greater number of small distributors than the latter, and it is not contested that the prices charged in this sector of the market are normally higher.

(9) The investigation of dumping concerning the smaller manufacturers covered the period 1 October 1983 to 31 March 1984.

(10) For the purpose of establishing normal value for each of these smaller manufacturers, whose manufacturing activity related entirely to bearings, the Commission selected a representative sample of ball bearings the exports of which to the Community represented the largest aggregate values and together accounted for at least 75 % of each manufacturer's exports of ball and tapered roller bearings to the Community during the investigation period. Normal value was established for this sample on the basis of the weighted average price paid for types of like products on the Japanese market. Where a manufacturer did not sell a type identical to the type exported on the domestic market, normal value was established for a type sold on the domestic market which has characteristics closely resembling those of the type actually exported. Where such similar type was not available, normal value was established on the basis of constructed value by adding, for each company, the cost of production and a profit margin equal to the operating profit realized during its last complete financial year.

D. Export price

(11) Except where exports were made to subsidiary companies in the Community, export prices were established on the basis of the prices actually paid or payable to the bearing manufacturers for the product sold by them for export to the Community. This basis was applied not only to those manufacturers who sold directly to customers in the Community but also to those who sold for export to the Community through independent intermediate companies in Japan, known as 'trading houses' and to those who did both. In these cases the price at which the manufacturer

sold the bearings to the intermediate company has been considered as the export price within the meaning of Article 2 (8) (a) of Regulation (EEC) No 2176/84, taking into consideration the fact that the ultimate destination of the goods was known by the manufacturer at the time of their delivery to the trading house, and that normal value has been established at a corresponding level. This approach implies that where the trading houses export under their own name, their exports will be subject to the duty applying to 'others', unless they show that the bearings exported emanate from a given manufacturer to the exports of which a lesser individual duty applies. This result takes account of the possibilities open to the trading houses to obtain bearings for export from any of a large number of different manufacturers. In view of these possibilities the alternative — of making findings for the trading houses themselves based on transient relationships with a variety of suppliers — does not appear to be a reasonable solution. This approach was also used in the case of one manufacturer who has been selling the bearings concerned, for the purpose of export to the Community, to another independent Japanese manufacturer, since the latter neither produced nor sold like bearings on the Japanese market and was therefore assuming the functions of a trading house in respect of these bearings exports. In this context it was considered to be irrelevant whether the intermediate company set its resale price independently and/or applied a fixed mark-up. The addition to the manufacturer's export price of the profit margin and overheads of the intermediate company which is not controlled by its supplier, as proposed by the respondent concerned, would only be justified if the dumping margin were to be established for the intermediate company and not for the manufacturer.

(12) Where exports were made to subsidiary companies in the Community, the same method was applied as for the purpose of establishing the provisional duty, taking into account, however, new evidence supplied by the parties concerned. Some parties contested the deduction of a 6 % profit margin attributable to the Community subsidiaries of the Japanese manufacturers in the construction of the export prices. The data gathered by the Commission showed that this margin was equally valid for a company functioning as a fully fledged sales subsidiary and for one which keeps the bearings concerned in a bonded warehouse and sells them to unrelated importers in the Community.

E. Comparison

(13) For the purpose of comparison between normal value and export prices the Commission took account, where appropriate, of differences affecting price comparability such as differences in physical characteristics and differences in conditions and terms of sale where claims of a direct relationship of these differences to the sales under consideration could be satisfactorily demonstrated, which was the case in respect of differences in credit terms, warranties, technical services, commissions, salaries paid to salesmen, packing, transport, insurance, handling and ancillary costs. All comparisons were made at ex works level. No allowance was granted for claims in respect of overheads and general expenses. Indeed Community legislation limits the elements to be taken into account when establishing price comparability to certain factors considered relevant as set out in Article 2 (9) of Regulation (EEC) No 2176/84 : physical characteristics, quantities, conditions and terms of sales, time, and level of trade. The only heading under which overheads and general expenses could be considered is conditions and terms of sales, but in this context any adjustments are limited to those differences which bear a direct relationship to the sales under consideration. Community legislation considers that this is not the case, generally, for differences in overheads and general expenses.

(14) One party claimed that where normal value was based on the combined weighted average of the prices of sales made to unrelated purchasers by the manufacturer and by its wholly owned or controlled sales companies, allowance should be made in addition for overheads and general expenses incurred by the domestic sales companies on the grounds that all of their costs would bear a direct relationship to the sales on the domestic market because they were exclusively engaged in domestic sales of bearings. This request cannot be granted. In the first place, this claim refers to a formal distinction between the sales branches of the manufacturing company and its sales companies, which cannot be accepted in view of the close relationship between the manufacturer and its sales subsidiaries, deriving from the overall control exercised by the former, which has already been referred to under paragraph 8, above. Therefore the argument advanced by the respondent — whereby the relationship of overheads with sales differs between the manufacturing and the sales companies — is not founded.

Moreover, under Regulation (EEC) No 2176/84 allowances can only be granted for differences in the factors mentioned in Article 2 (9). One of these factors is 'conditions and terms of sale'. This is a relatively narrow technical term referring to the obligations inherent in a sales contract, which may be laid down in the contract itself or in general conditions of sale issued by the seller. What is decisive is whether the costs are strictly necessary to fulfil the terms of the sales under consideration.

Where this first criterion is met, it must be shown in addition that these costs bear a direct functional relationship to the sales under consideration, i.e. that they are incurred because a particular sale is made. In general, overheads and general expenses, wherever they occur, do not have such a direct functional relationship and are therefore not allowable. There is no reason to deviate from this guideline because of formal legal differences such as the attribution of overall management functions to one company rather than another, or to more than one company, the corporate structure of the group, or the handling of domestic sales by a sales subsidiary or a sales department.

(15) One company claimed an allowance for a reasonable profit margin attributable to its domestic sales companies, in addition to all overheads and general expenses incurred by them, alleging differences in the level of trade between sales effected by these companies and sales made by the manufacturer for export. As to this claim, it is obvious that in view of the similarity of function assumed by the sales companies on the one side and by sales branches or sales departments of the manufacturer on the other side, and in view of the absence of significant differences in the composition of categories of their customers, there is no difference in the level of trade for which an allowance would be justified. In addition, the claim should also be rejected on the grounds of the reason already given under paragraph 14, above, referring to the purely formal nature of the distinction between the manufacturer and its sales subsidiaries.

(16) Some parties also raised the point that since in the case of associated importers, all costs of the importer are taken into account for the purpose of constructing the export price, an identical approach should be followed where sales on the domestic market are being made indirectly through an associated sales company. This argument confuses two different issues, namely the construction of the export price on the basis of a resale price of a related importer, and the comparison between normal value and export price. For the purpose of constructing the export price, Regulation (EEC) No 2176/84 prescribes the deduction of all costs incurred between importation and resale. This is designed to arrive at an export price which is deemed not to be influenced by the relationship between the exporting company and its associated importer. As to the comparison between normal value and export price other rules apply which have led to price adjustments for all allowable factors, as explained under point 13 above.

F. Dumping margins

(17) Normal value was compared with export prices on a transaction-by-transaction basis, exports at identical prices being grouped together.

(18) A number of parties reiterated their claim that normal value should not be set against export prices on a transaction-by-transaction basis but that the weighted average domestic price should be compared with the weighted average export price for each type of bearing. The reasons for the adoption of the transaction-by-transaction, method which is in full conformity with Article 2 (13) (b) of Regulation (EEC) No 2176/84 have been set out in paragraph 12 of Commission Regulation (EEC) No 3669/84 imposing a provisional duty and are confirmed for the purpose of the definitive determination of dumping.

(19) The dumping margins established on the above-mentioned basis for each type of bearing were thereafter weighted with regard to the total cif export value of the bearings investigated. Where manufacturers also sold through trading houses at higher prices than those charged for direct exports, this fact was taken into consideration both in the calculation of the dumping margins for the various types of bearing and in the weighting of those margins in relation to the total cif value. The following overall dumping margin was obtained for each company :

	Ball bearings	*Tapered roller bearings*
	(%)	*(%)*
NTN Toyo Bearing Ltd, Osaka	3,20	2,09
Koyo Seiko Co. Ltd, Osaka	5,52	4,39
Nippon Seiko KK, Tokyo (NSK)	16,71	45,04
Nachi Fujikoshi Corporation, Tokyo (Nachi)	13,91	22,72
FKC Bearing Co. Ltd, Osaka	1,21	no exports
Fujino Iron Works Co. Ltd, Osaka	7,97	no exports
Izumoto Seiko Co. Ltd, Osaka	21,75	no exports
Nankai Seiko Co. Ltd, Osaka	4,23	no exports
Sapporo Precision Inc, Sapporo	1,86	no exports
Wada Seiko Co. Ltd, Osaka	10,73	no exports

Exports made by Inoue Jikuuke and by Maekawa Bearing were not found to have been dumped and the dumping margins found in respect of Matsuo Bearing (0,98 %) and Minamiguchi Bearing (0,97 %) were considered *de minimis.*

(20) In respect of one of the manufacturers concerned, Izumoto Seiko Co. Ltd, the information concerning normal value which had been submitted in reply to the questionnaire could not be verified at the time of the on-the-spot investigation and further contradictory data were submitted to the Commission officials on that occasion. The company was given, therefore, a final opportunity to submit complete data in writing and was invited to allow verification of these data at the Commission offices. The company provided no information which could be verified. It has been necessary, therefore, to base determination of dumping with regard to this company on the facts available, using for the calculations only those data supplied by the company which were considered to be sufficiently reliable.

(21) For any manufacturers or exporters who have not made themselves known in the course of the investigation, dumping has been determined on the basis of the facts available. In this connection the Commission considered that the results of its investigation provided an accurate basis for determination of the level of dumping and that it would constitute a bonus for non-cooperation to assume that the dumping margin for these operators was any lower than the highest dumping margins determined with regard to manufacturers or exporters who had cooperated in the investigation. For these reasons it is considered appropriate to use these latter dumping margins for the residual group of manufacturers and exporters, if any, who have not offered their cooperation.

G. Injury

(22) The Council has reconsidered the evidence that led the Commission to the conclusions concerning injury as contained in Commission Regulation (EEC) No 3669/84. None of the parties involved having submitted any new evidence or raised any substantiated arguments which would have called into question the validity of the Commission's conclusion on injury reached in its preliminary determination, these conclusions are confirmed. The facts, particularly with regard to undercutting on the Community market, as finally established show that the injury being caused by dumped imports of ball bearings with a greatest external diameter of more than 30 mm and of tapered roller bearings originating in Japan, taken in isolation from that caused by other factors, has to be considered as material.

H. Community interest and rate of duty

(23) Only one Community purchaser of the said bearings has reacted to the proceedings after the imposition of the provisional duties and complained that the imposition of these duties made it difficult to compete with bearings originating in eastern Europe. While such difficulties may exist they would not justify not taking any action against injurious imports from Japan. Meanwhile the Commission has re-opened anti-dumping proceedings against bearing imports from eastern Europe.

(24) In view of the particularly serious difficulties facing the Community industry, its economic, social and strategic importance and the relatively low incidence of a price increase resulting from the imposition of an anti-dumping duty on the cost of goods manufactured in the Community, the Council has come to the conclusion that it is in the Community's interest that action be taken. In these circumstances, protection of the Community's interest calls for the imposition of a definitive anti-dumping duty on imports of ball bearings with greatest external diameter of more

than 30 mm and of tapered roller bearings originating in Japan, and for collection of the amounts secured by way of provisional anti-dumping duty at the rates of duty definitively imposed in the cases of Koyo Seiko Co. Ltd (for both categories of bearing), Nachi Fujikoshi Corporation (for both categories of bearing), NTN Toyo Bearing Co. Ltd (for tapered roller bearings only), and at the rates of provisional duty in the remaining cases. The rate of the anti-dumping duty should correspond to the margins of dumping found, rounded down to the nearest tenth of one percent, having regard to the extent of the injury caused, and particularly in view of the undercutting found in the course of the Commission's investigation. In all of the cases examined, amounts of undercutting in respect of imported bearings were ascertained which exceeded the duties imposed, both provisional and definitive, on the basis of price levels at the relevant period.

(25) One party requested that the definitive duty on ball bearings should be limited to single row deep groove ball bearings, since the former price undertakings had been limited to this category of ball bearings and the investigation had been limited to it as well.

While it is true that the former price undertakings were limited to this category of ball bearings, the present investigation was initiated in order to review the measures adopted in the context of the proceeding previously initiated against ball and tapered roller bearings and which was not limited to a specific kind of ball bearing. Measures taken pursuant to the present investigation in the course of these proceedings need not, therefore, be limited to the same extent as were the old price undertakings. While it is also true that in respect of the four big manufacturers and exporters the investigation concentrated on single-row, deep-groove ball bearings, these bearings must be considered to be representative of all ball bearing exports to the Community by these four suppliers. This representativity was not disputed by any of the four companies which, after the imposition of the provisional duties, were expressly invited to submit data on normal value and export prices for ball bearings other than single-row, deep-groove ball bearings where they could demonstrate that certain of these types would fall under the most important types exported accounting for 75 % of exports to the Community. None of these companies submitted such data.

As far as the small manufacturers were concerned, the investigation took into account exports to the Community of all ball bearing types.

(26) One independent importer has claimed that his Japanese supplier has significantly increased his export prices as from April 1984, i.e. after the end of the reference period chosen by the Commission for the calculation of the dumping margin, and that these increases should be taken into account in the determination of the final dumping margin.

Under the terms of Article 12 (1) of Regulation (EEC) No 2176/84 the final determination of dumping always refers to the period under investigation. For the purposes of definitive anti-dumping measures developments which occurred after the end of this period, whether they relate to the issue of dumping or injury, must necessarily be ignored. Any other method would render an investigation virtually permanent, allow exporters to manipulate the results by short-lived price increases and is not warranted by Regulation (EEC) No 2176/84.

I. Undertakings

(27) None of the exporters concerned by the investigation has offered a price undertaking.

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ball bearings with greatest external diameter of more than 30 mm and of tapered roller bearings falling within heading No ex 84.62 of the Common Customs Tariff and corresponding to NIMEXE codes 84.62-09 and 84.62-17, originating in Japan with the exception of bearings manufactured by Inoue Jikuuke Kogyo Co. Ltd, Maekawa Bearing MFG Co. Ltd, Matsuo Bearing Co. Ltd and Minamiguchi Bearing MFG Co. Ltd.

2. The rate of the anti-dumping duty shall be as set out below, expressed as a percentage of the net, free-at-Community-frontier price before duty ;

(a) Ball bearings (greatest external diameter more than 30 mm) manufactured by :

— NTN Toyo Bearing Ltd, Osaka :	3,2 %
— Koyo Seiko Co. Ltd, Osaka :	5,5 %
— Nippon Seiko KK, Tokyo (NSK) :	16,7 %
— Nachi Fujikoshi Corporation, Tokyo (Nachi) :	13,9 %

— FKC Bearing Co. Ltd, Osaka : 1,2 %
— Fujino Iron Works Co. Ltd, Osaka : 7,9 %
— Izumoto Seiko Co. Ltd, Osaka : 21,7 %
— Mankai Seiko Co. Ltd, Osaka : 4,2 %
— Sapporo Precision Inc., Sapporo : 1,8 %
— Wada Seiko Co. Ltd, Osaka : 10,7 %
— Others : 21,7 %

(b) Tapered roller bearings manufactured by :

— NTN Toyo Bearing Ltd, Osaka : 2,0 %
— Koyo Seiko Co. Ltd, Osaka : 4,3 %
— Nippon Seiko KK, Tokyo (NSK) : 45,0 %
— Nachi Fujikoshi Corporation, Tokyo (Nachi) : 22,7 %
— Others : 45,0 %

3. The provisions in force with regard to customs duties shall apply to the said duty.

Article 2

The amounts secured by way of provisional anti-dumpung duty under Regulation (EEC) No 3669/84 shall be collected at the rates of duty definitively imposed in the cases of Koyo Seiko Co. Ltd (for both categories of bearing), Nachi Fujikoshi Corporation (for both categories of bearing), NTN Toyo Bearing Co. Ltd (for tapered roller bearings only), and at the rates of provisional duty in the remaining cases, which are Nippon Seiko KK (for both categories of bearing) and NTN Toyo Bearing Co. Ltd (for ball bearings).

Article 3

This Regulation shall enter into force on the day following 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, 24 June 1985.

For the Council

The President

C. SIGNORILE