

COMMISSION REGULATION (EC) No 371/94

of 17 February 1994

imposing a provisional anti-dumping duty on imports into the Community of large aluminium electrolytic capacitors originating in the Republic of Korea and Taiwan

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 Economic Community⁽¹⁾, and in particular Article 11 thereof,

After consultation within the Advisory Committee,

Whereas :

A. PROCEDURE

- (1) By Regulation (EEC) No 3482/92⁽²⁾, the Council imposed a definitive anti-dumping duty at the rate of 75 % on imports of certain large aluminium electrolytic capacitors (hereinafter referred to as 'LAECs', originating in Japan, with the exception of some companies for which the rate of duty ranged from 11,6 to 35,8 %.
- (2) In December 1992, the Commission received a complaint lodged by the Federation for Appropriate Remedial Anti-dumping (FARAD), on behalf of producers whose collective output of LAECs allegedly represented a major proportion of the Community production, in which it was requested to extend the proceeding to include imports of LAECs originating in the Republic of Korea and Taiwan.

The complaint contained evidence of dumping of the said product originating in the countries indicated above and of material injury resulting therefrom. This evidence was considered sufficient to justify the initiation of a proceeding.

The Commission, accordingly, announced, by a notice published in the *Official Journal of the European Communities*⁽³⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of LAECs originating in the Republic of Korea and Taiwan, falling within CN code ex 85 32 22 00, and commenced an investigation.

- (3) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the Republic of Korea, and

the complainant, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

- (4) The Commission sent questionnaires to parties known to be concerned and received responses from two of the three complainant producers, together with one Taiwanese producer and a Taiwanese trader. None of the six alleged Korean producers nor the importer known to the Commission replied to the Commission's questionnaire.

One company named as a related importer replied stating that it had not imported LAECs during the investigation period.

- (5) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

(a) Complainant Community producers :

- Nederlandse Philips Bedrijven BV, Zwolle, Netherlands,
- Roederstein GmbH, Kirchzarten, Germany ;

(b) Exporters and producers in Taiwan :

- Kaimei Electronic Corp., Taipei,
- Lelon Electronics Corp., Taichung.

- (6) The investigation of dumping covered the period 1 January to 31 December 1992 ('the investigation period').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(i) Description of the product concerned

- (7) The products under investigation are large electrical capacitors, non-solid, aluminium electrolytic, with a CV product (capacitance multiplied by rated voltage) between 8 000 and 550 000 µc (microcoulombs) at a voltage of 160 V or more, falling within CN code ex 8532 22 00.
- (8) When compared to the previous proceeding concerning Japan, this product description covers a larger range of capacitors, namely those of lower and higher capacitance in order to take account of new technical and market development. The types of capacitors subject to this investigation are, nevertheless, as in the previous proceeding, generally

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No L 353, 3. 12. 1992, p. 1.

⁽³⁾ OJ No C 67, 10. 3. 1993, p. 7.

incorporated in consumer electronic goods and used in the telecommunications sector. Despite minor differences in size, lifespan, voltage or design, the various types of capacitors have the same essential physical and technical characteristics and form one single category of product.

(ii) Like product

- (9) The Commission has examined whether LAECs of Korean and Taiwanese origin can be regarded as alike, for the purposes of Article 2 (12) of Regulation (EEC) No 2423/88, to those produced and sold in the Community.

On the basis of information available, it was found that the various types of Taiwanese and Korean LAECs are similar to those produced and sold in the Community. Furthermore, on a type-by-type basis, they are essentially alike in all respects to those of the complainant Community industry, given that they are normally produced according to industrial standards.

- (10) Therefore, the Commission concludes that all LAECs covered by the investigation as defined in recital 7, produced and sold in the Community, Korea and Taiwan have to be considered a 'like product'.

C. DUMPING

1. Normal value

1.1. Korea

- (11) In the complete absence of information from any Korean producers on prices and costs on the domestic market normal value was established on the basis of the facts available, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. In this respect, the most reasonable basis was considered to be that set out in the complaint.
- (12) The complaint established normal value on the basis of the constructed value of a representative type, one of those most sold on the Community market, but without the addition of any profit. For the purpose of a provisional determination, normal value was calculated by taking this constructed value and adding a profit margin of 10 % as suggested by the complainant. This profit margin was considered to be the most reasonable for this type of product on the Korean market.

1.2. Taiwan

- (13) Of the two Taiwanese companies that replied to the Commission's questionnaire, one is a producing exporter and the other a trading company. Consi-

dering that a trading company is normally free to purchase from any source, and may change its source of supply whenever convenient, a trading company cannot be treated in the same way as a producer. Therefore, as a rule, individual dumping margins are not established, nor are duties imposed on exporters who do not manufacture the product. Accordingly, an individual dumping margin was calculated for the cooperating producer and exporter, Kaimel Electronic Corp., only.

- (14) Normal value was, provisionally, established on the basis of the price actually paid in the ordinary course of trade for domestic sales of those models within the like product which were made in sufficient quantities to afford a proper comparison.
- (15) For those models which were exported but not sold on the domestic market or sold at a loss, constructed value was used in accordance with Article 2 (3) (b) of Regulation (EEC) No 2423/88. Constructed value was based on the cost of production of the model in question plus the selling, general and administrative expenses incurred by the company for sales of the product concerned on the domestic market and a profit margin representing the average profit realized on the sales of profitable models on the domestic market.

2. Export price

2.1 Korea

- (16) In the complete absence of information from the Korean producing exporters, the export price, as for normal value, was established in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88 on the basis of the facts available — in this case the export price of a representative model given in the complaint. Information provided by EUROSTAT was not considered appropriate, since the product under consideration is covered by a CN code which includes other aluminium electrolytic capacitors and which does not allow, in this case, for differentiation between the prices of the models of capacitors covered by the proceeding and those other models.

2.2 Taiwan

- (17) Exports were made to independent Community buyers. Export prices were provisionally determined on the basis of the prices actually paid or payable for the product sold for export to the Community.

3. Comparison

3.1 Korea

- (18) The constructed normal value, as determined under recital 12, was compared at an ex factory level with the export price as determined under recital 16.

3.2 Taiwan

- (19) The normal value, by model, was provisionally compared with the export price for the corresponding type, transaction by transaction, at the same level of trade and on an ex works basis. For the purposes of a fair comparison, adjustments were made in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88 to take account of differences affecting price comparability, such as transport, insurance, credit terms, indirect taxes.

4. Dumping margins

- (20) The comparison showed the existence of dumping, the dumping margins being equal to the amount by which the normal value, as established, exceeds the price for export to the Community. The dumping margins, when expressed as a percentage of the free-at-Community-frontier price, are as follows:

Korea : 70,6 %

Taiwan

— Kaimei Electronic Corp.: 10,7 %,

— Other companies : 75,8 %.

- (21) In the case of Taiwanese firms which did not cooperate or were known to the Commission in the investigation, the dumping margin was established on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. It was considered that the most reasonable facts were those established during the investigation. It was further considered that it would constitute a bonus for non-cooperation and could lead to circumvention of the anti-dumping measures should such firms be assigned a dumping margin lower than the highest dumping margin found for a particular model of the cooperating company.

D. COMMUNITY INDUSTRY

- (22) The Commission found that four large producers of LAECs, and some small producers, are established in the Community. Of the three complainant producers, one of them, B.H. Components Ltd, Weymouth, United Kingdom, was taken over by a United States company in March 1993 to form BHC Aerovox Ltd, and was not prepared to complete the Commission's questionnaire.

The fourth producer, Siemens-Matsushita Components GmbH & Co. KG, München, Germany is a joint venture formed by a Community producer and a Japanese company. It did not cooperate with the Commission's investigation in the previous

proceeding concerning imports of LAECs originating in Japan and did not support this complaint.

- (23) Notwithstanding the above, the output of the two cooperating complainant producers accounted for a major proportion of the total Community production, within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

E. INJURY

1. General

- (24) In its examination of injury, the Commission has borne in mind that it was established in an earlier proceeding that the Community industry had suffered material injury with regard to imports of certain LAECs originating in Japan. This determination was based on the period covering the years 1988 to 1990. However, it is estimated that the complainant producers' production volume of capacitors covered by the proceeding concerning Japanese imports represents around 90 % of their production volume covered by this proceeding. In this case therefore, in view of the larger range of capacitors covered by the proceeding, a new injury investigation has to be conducted for the period 1989 to 1992.

2. Cumulation of the effects of the dumped imports

- (25) In establishing the impact of the dumped imports on the Community industry, the Commission has considered the effect of all Korean and Taiwanese dumped imports.

In analysing whether cumulation of these imports is appropriate, the Commission has assessed the comparability of the product imported from the countries concerned by the investigation in terms of the following criteria: similarity in physical characteristics, interchangeability of end uses, scale of the volumes imported, simultaneous competition in the Community with each other and with the like product manufactured by the Community industry, and similarity of channels of distribution and price behaviour on the Community market of the producers in each country.

- (26) On the basis of information available, it was found that the Korean and Taiwanese LAECs considered on a type-by-type basis, are alike in all respects, interchangeable and marketed in the Community within a comparable period and under similar commercial conditions. Moreover, they compete with each other and the like product manufactured by the Community industry. In addition, the volume of the dumped imports from each of the countries concerned could not be considered negligible.

- (27) In those circumstances and in accordance with the practice of the Community institutions, it is considered that there are sufficient grounds for cumulating the imports from the countries concerned.

3. Volume and market share of the dumped imports

- (28) Since the CN code within which LAECs fall embraces other aluminium electrolytic capacitors not covered by this proceeding, no precise figures concerning total imports and total consumption of the product concerned were available. However, the information obtained during the investigation does not cast doubt on the estimates made by the complainant with regard to the proportion of LAECs out of total imports covered by the said CN code from the countries concerned. Moreover, the paucity of the non-complainant Community industry's information obtained during the investigation does not allow the Commission to use the estimates relating to its sales. In those circumstances, the Community consumption was calculated on the basis of the complainant Community industry's sales on the Community market plus the imports of LAECs into the Community as estimated by the complainant.

- (29) On this basis, the consumption shows a steady increase of 32,3 % over the period 1989 to 1992.

- (30) No information has been submitted that would suggest that the trends of the relevant economic indicators provided below would be significantly different after inclusion of the EC sales of the non-complainant producers.

- (31) The volume of the cumulated dumped imports into the Community of the product originating in the exporting countries steadily increased by 91 % from 1989 to 1992. Assessed in the light of the Community consumption as defined in recital 28, the development of these imports led to a rise in the combined market share in the Community held by the exporting countries concerned, from 11,3 % in 1989 to 16,3 % during the investigation period.

4. Prices of dumped imports

- (32) Prices of the imported product from the countries concerned were significantly below the prices charged by the Community producers during the investigation period.

As regards the cooperating Taiwanese producer, price undercutting has provisionally been calculated as the average difference between its cif prices duty-paid to independent customers and the prices of the Community producers, adjusted to a comparable level of trade on the Community market. The comparison was made on a per model basis for each of the models imported which were consi-

dered for the dumping determination. On this basis, the average undercutting margins range from 0 to 54,2 % according to the model involved. The weighted average for all models involved is 13 %.

- (33) For the non-cooperating Korean and Taiwanese producers, prices of dumped imports were based on the best information available, namely the complaint, in accordance with Article 7 (7) of Regulation (EEC) No 2423/88. The undercutting margin based on the same representative model amounts to 8,6 % for Korea and 17,2 % for Taiwan.

5. Situation of the Community industry concerned

(a) *Production, capacity and utilization of capacity*

- (34) The volume of production increased by 9,4 % between 1989 and 1990 but dropped by 29,3 % between 1990 and the investigation period.

- (35) Production capacity increased by 12,8 % between 1989 and 1990 and remained constant from 1990 to 1992. It has to be noted that this increase is much less than that of apparent consumption.

- (36) The utilization rate decreased from 61,8 % in 1989 to 42,4 % in 1992, indicating that the Community producers were not in a position to take advantage of the increasing demand.

(b) *Sales, stocks and market share*

- (37) The sales of the Community industry concerned decreased from 11,4 million units in 1989 to 9 million units in the investigation period — a decrease of 21 % over the whole period — while the apparent consumption showed an increase of 32,3 %. As a result, its market share fell from 29,4 % in 1989 to 17,6 % in 1992.

- (38) The stocks held by the complainant Community producers increased by 16,6 % between 1989 and 1990, but dropped by 9,5 % between 1990 and 1991 and by a further 42 % between 1991 and the investigation period. This latter decrease results from the Community producers' decision to exhaust their stocks.

(c) *Prices*

- (39) The continuing practice of price undercutting has prevented the Community producers from increasing their prices.

(d) *Profitability*

- (40) The Commission found that, overall, the Community industry had recorded losses which, when expressed as a percentage of the Community industry's sales turnover, increased from 2,4 % in 1989 to 32,4 % in the investigation period.

(41) (e) *Investments*

The financial losses have had negative effects on the complainant Community producer's ability to carry out investments to increase their productivity and R&D for new components and new technology. Investments decreased by 84,8 % between 1989 and 1992.

(f) *Conclusion on injury*

- (42) The complainant Community producers have experienced a considerable drop in production, sales and market shares at a time when Community consumption has risen by more than 32 %. Financial losses have increased considerably and capital investment has been severely cut back.

In the light of the above, the Commission provisionally determined that the Community industry concerned had suffered material injury, within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

F. CAUSATION OF INJURY

- (43) The Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports and whether other factors might have caused or contributed to that injury.

(a) *Effect of dumped imports*

- (44) In its examination the Commission has found that the volume of imports concerned is significant both in absolute terms and in relation to consumption on the Community market. Furthermore, the marked increase in volume and market share of those low-priced dumped imports coincided in time with the deterioration of the state of the Community industry. This deterioration is witnessed by the Community producers' loss of sales volume and market share, price erosion and increased financial losses. It is therefore considered that dumped imports from Korea and Taiwan have caused injury to the Community industry concerned.

(b) *Effects of other factors*

- (45) In assessing the effects of other factors, the Commission has taken account of the fact that dumped imports from Japan have already caused material injury to the Community industry concerned.
- (46) The Commission has also considered whether imports from countries other than Japan, Korea and Taiwan might have contributed to the injury suffered by the Community industry. In this respect, it has to be noted that the market share of

imports from other third countries remained stable at around 12 % between 1989 and 1992.

Moreover, to judge by the information available to the Commission, the price of those imports appears to be higher overall than that of imports originating in Japan, Korea and Taiwan.

- (47) The Commission also examined whether the marketing activity of the non-complainant Community industry might have contributed to the injury suffered by the complainant Community producers. Judging by the information available, there is no evidence suggesting that the trend of their sales and prices charged on the Community market is different from that of the complainant Community industry.

(c) *Conclusion*

- (48) After taking account of the above factors, and given the finding of material injury already caused by dumped imports from Japan, it is concluded that, even if the imports from third countries other than Japan, Korea and Taiwan and the sales by non-complainant Community producers have contributed to the injury suffered by the Community industry, the low-priced dumped imports from Korea and Taiwan, taken in isolation, have also, through their increased market penetration and price undercutting, caused injury which has to be regarded as material.

G. COMMUNITY INTEREST

- (49) In assessing whether the interests of the Community call for intervention to prevent further injury during the proceeding, the Commission considered that the purpose of anti-dumping duties is, in general, to stop distortion of competition due to unfair commercial practices and thus to re-establish open and fair competition on the Community market, which is fundamentally in the general Community interest.
- (50) Furthermore, it was considered to be in the Community interest to take measures against dumped imports of certain LAECs originating in Japan. There is nothing to warrant any revision of the position adopted at the time, which was based, in particular, on the low impact of the duty on the prices of the consumer end-products and the possible disappearance of the Community industry in the absence of measures; those arrangements now apply equally to dumped imports originating in Korea and Taiwan.

In addition, not to take action against the Korean and Taiwanese imports of LAECs would discriminate against imports from Japan, weaken the effect of measures against Japanese imports and distort competition on the Community market.

- (51) Therefore, the Commission concludes that the adoption of measures aimed at re-establishing fair competitive conditions in the Community market for the product concerned and at eliminating the injurious effects of the dumped imports originating in Korea and Taiwan, is in the interest of the Community and that the measures should take the form of a provisional anti-dumping duty.

H. PROVISIONAL DUTY

- (52) For the purpose of establishing the level of the provisional duty, the Commission examined the dumping margins recorded and the amount of duty necessary to eliminate the injury sustained by the Community industry. Since the injury consisted principally of price undercutting, price depression, suppression of capacity utilization and loss of market share and, as a consequence, increased financial losses, the removal of such injury required that the industry be enabled to increase its prices to profitable levels without loss of sales volume. In order to achieve this, the prices of the imports from Korea and Taiwan should be increased accordingly.
- (53) In order to calculate the necessary price increase and determine whether a lower duty than the dumping margin should be imposed, in accordance with Article 13 (3) of Regulation (EEC) No 2423/88, the Commission compared, for each of the models considered for the dumping determination, the average free-at-Community-frontier import price of the dumped product, duty-paid, with the corresponding average cost of production of the complainant Community producers, to which was added a profit margin of 10 %. This profit margin was considered, for the purpose of this preliminary determination, the minimum required to ensure the viability of the Community industry. The difference between the two prices has then been expressed as a percentage of the free-at-Community-frontier price, duty unpaid. As the resulting percentage is higher than the dumping margins, the anti-dumping duties should be based on these margins according to Article 13 (3) of Regulation (EEC) No 2423/88.

I. FINAL PROVISION

- (54) In the interest of sound administration, a period should be fixed within which the parties concerned

may make their views known in writing and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of large electrical capacitors, non-solid, aluminium electrolytic with a CV product (capacitance multiplied by rated voltage) of between 8 000 and 550 000 µc (micro-coulombs) at a voltage of 160 V or more, falling within CN code ex 8532 22 00 (Taric codes: 8532 22 00*13, 8532 22 00*17, 8532 22 00*93 and 8532 22 00*97), and originating in the Republic of Korea and Taiwan.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows:

Country	Products manufactured by	Rate of duty (%)	Taric additional code
Korea	All companies	70,6	
Taiwan	Kaimei Electronic Corp.	10,7	8773
	Other companies	75,8	8774

3. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

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 Brussels, 17 February 1994.

For the Commission

Leon BRITTAN

Member of the Commission