

COMMISSION REGULATION (EEC) No 2516/86

of 4 August 1986

imposing a provisional anti-dumping duty on imports of housed bearing units
originating in Japan

THE COMMISSION 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 Economic Community⁽¹⁾, and in particular Articles 11 and 14 thereof,

After consultations within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. PROCEEDING

1. In January 1985, the Commission received a request asking it to review its Decision of 3 June 1978⁽²⁾ accepting the undertakings given by certain Japanese producers/exporters during the proceeding initiated in 1977 concerning imports of housed bearing units originating in Japan⁽³⁾, and to initiate an investigation of those Japanese producers/exporters who either had not given such an undertaking or had not been included in the previous investigation.
2. The request, submitted by the Federation of European Bearing Manufacturers' Associations (FEBMA) on behalf of a group of manufacturers of housed bearing units representing practically all Community production of the products in question, included evidence of changed circumstances judged sufficient to justify a review of the Decision referred to above and the reopening of the investigation. The Commission therefore announced, in a notice published in the *Official Journal of the European Communities*⁽⁴⁾, the reopening of the anti-dumping proceeding concerning imports into the Community of housed bearing units falling within subheading ex 84.63 B I of the Common Customs Tariff corresponding to NIMEXE code ex 84.63-12, originating in Japan.
3. In that notice the Commission specified a period within which interested parties could make known their views in writing and apply to be heard.
4. The producers/exporters and importers of housed bearing units, the representatives of the exporting

country and the complainants and certain importers made known their views in writing, in some cases by replying to the questionnaires sent to them. Some of them also applied to be heard and a hearing was granted.

5. All the producers/exporters, the complainants and certain importers made known their views in writing, in some cases by replying to the questionnaires sent to them. Some of them also applied to be heard, and a hearing was granted.
6. During the period specified in the notice of reopening of the proceeding, a Japanese producer of housed bearing units contacted the Commission and offered to cooperate with the investigation. However, since this producer said that it had not sold housed bearing units for export to the Community during the reference period referred to at B (a) below, it was not included in the investigation.
7. No submissions were made by Community users of housed bearing units.
8. The Commission collected all the information it deemed necessary for the investigation and for a preliminary determination of the facts, and verified it as far as possible in the time available.
9. It carried out investigations at the premises of the following companies :

Non-EEC producers/exporters :

1. Asahi Seiko Co. Ltd (Asahi), Osaka,
2. Koyo Seiko Co. Ltd (Koyo), Osaka,
3. Nachi Fujikoshi Corporation (Nachi), Tokyo,
4. Nippon Pillow Block Sales Co. Ltd (FYH), Tokyo,
5. Nippon Seiko KK (NSK), Tokyo,
6. NTN Toyo Bearing Ltd (NTN), Osaka,
7. Showa Pillow Mfg. Co. Ltd (NBR), Osaka ;

EEC producers :

1. RHP Group plc, Billericay, Essex, UK,
2. RIV-SKF Industrie SpA, Turin, Italy,
3. Schaeffler Wälzlager GmbH, Homburg, Germany.

B. DUMPING

(a) General

10. The dumping investigation covered the period 1 December 1984 to 31 May 1985.

⁽¹⁾ OJ No L 201, 30. 7. 1984, p. 1.

⁽²⁾ OJ No C 129, 3. 6. 1978, p. 3.

⁽³⁾ OJ No C 257, 26. 10. 1977, p. 2.

⁽⁴⁾ OJ No C 132, 31. 5. 1985, p. 2.

11. For the purposes of the investigation, Nippon Pillow Block Manufacturing Co. Ltd and Nippon Pillow Block Sales Co. Ltd, both established in Japan, were treated, at their request, as a single economic unit. The information submitted to the Commission showed that a substantial part of the capital of both companies was held, and both companies managed, by the same persons. It was also established that the only business activity of the Nippon Pillow Block Manufacturing Co. Ltd was to manufacture the products marketed exclusively by the Nippon Pillow Block Sales Co. Ltd.

12. Given the particularly large number of types of housed bearing units exported by the Japanese producers/exporters during the reference period, and the physical impossibility of establishing a separate dumping margin for each type, the Commission examined a representative sample of housed bearing units for each producer/exporter concerned, consisting of the 20 types for which turnover on exports to the EEC during the reference period seemed to be highest.

(b) Export prices

13. From the information submitted it was established that exports of housed bearing units to the Community were either direct, i.e. through sales to companies established in the territory of the Community, or indirect, i.e. through intermediaries established in Japan, whether 'commercial establishments' or other Japanese producers.

14. In the case of indirect exports, the price paid or payable to the producer by the intermediary was taken to be the export price within the meaning of Article 2 (8) (a) of Regulation (EEC) No 2176/84, since at the time of delivery to the intermediary the producer was aware of the final destination of the goods sold.

15. As regards direct exports to non-associated companies established in the Community, export prices were determined on the basis of the prices actually paid or payable.

16. This method was also provisionally adopted for direct exports to subsidiaries of the Japanese producers/exporters established in the Community. This approach in no way implies that, in establishing the definitive dumping margins applicable to those Japanese producers/exporters which have associated companies established in the Community, the Commission has renounced the possibility provided

by the provisions of Article 2 (8) (b) of Council Regulation (EEC) 2176/84 to reconstruct export prices on the basis of the price at which the imported product is first resold to an independent buyer and, where it considers it so warranted, to use such reconstructed export prices for the comparison between normal value and export prices.

(c) Normal value

17. The normal value of the housed bearing units in the representative sample was established on the basis of a weighted average of the prices actually paid or payable to the producers/exporters concerned in the ordinary course of trade for domestic sales of similar products intended for consumption in Japan.

18. For those producers/exporters whose domestic sales to independent buyers were made either exclusively or partially through the intermediary of sales companies of which they hold all or most of the capital, or which they control in some other way, the prices charged by those companies for domestic sales to independent buyers were used to establish the weighted average referred to above. It is considered normal to treat sales companies and the producer/exporter with which they are associated as a single economic unit, in so far as the sales companies concerned in this case are entirely dependent on the producer/exporter concerned and carry out functions on the domestic market which are essentially identical to those performed by a subsidiary or sales department.

(d) Comparison

19. In order to carry out a fair comparison between the normal value and the export prices of the housed bearing units in the sample, the Commission took account, either automatically or at the request of the producers/exporters concerned, of differences in factors which affect the comparability of prices, such as the physical characteristics or the terms and conditions of sale of the housed bearing units. All comparisons were made at the same level of trade, namely the ex-producer/exporter level.

(1) Allowance for differences in the conditions and terms of sale

20. As a general rule, the amount of allowance was determined on the basis of figures supplied by the producer/exporter concerned. However, where the producer/exporter concerned failed to supply sufficiently convincing evidence, the Commission determined the amount of allowance to be made on the basis of the information supplied by the other producers/

exporters. The Commission considered that it would be encouraging non-cooperation if it were to accept that the amount of allowance to be set against the normal values or export prices of the producer/exporter concerned could be lower or higher, respectively, than the amount of the lowest or highest allowance to be set against the normal values or export prices of the other producers/exporters, which had supplied evidence judged as being sufficient.

21. Claims submitted by Japanese producers/exporters for allowances for differences in the conditions and terms of sale were taken into account only where the interested parties were able to show satisfactorily that there was a direct functional relationship between the differences and the sales in question, which was generally the case for requests for adjustment on account of differences in credit terms, guarantees, technical assistance, servicing, commissions or salaries paid to salesmen, packing, transport, handling, loading and ancillary costs.
22. No allowance was made for differences in overheads and general expenses.

Article 2 (10) of Regulation (EEC) No 2176/84, which lays down guidelines for the examination of claims for allowances for differences in the conditions and terms of sale, limits such allowances to those differences which bear a direct relationship to the sales under consideration, and states very clearly the principle that allowances generally will not be made for differences in overheads and general expenses, including research and development or advertising costs. The term 'conditions and terms of sale' is, as the Community institutions have repeatedly stated, a technical concept with a relatively limited scope: it concerns the obligations inherent in a sales contract, fixed either in the contract itself or in the general conditions of sale established by the seller.

The concept implies that for the producer/exporter concerned to be entitled to an allowance for differences in the conditions and terms of sale, he must show unambiguously that the costs for which the allowance is claimed bear a direct relationship to the sales in connection with which they were incurred and that this relationship is functional, i.e. that the costs were incurred in order to fulfil the conditions and terms of sale. Since overheads and general expenses generally do not bear a direct functional relationship to specific transactions, as is stated in Article 2 (10) (c) of Regulation (EEC) No 2176/84, the Commission was unable to make the allowance claimed in cases where it was unable to obtain proof

of the existence of such a relationship, without infringing Article 2 (9).

23. In particular, the Commission considered that NSK's claim that the overheads and general expenses of its domestic sales subsidiaries bore a direct relationship to domestic sales, because the activities of the sales companies were concentrated exclusively on the Japanese domestic market, in no way established that the general expenses incurred by these sales companies were essential for fulfilling the obligations inherent in the sales made by them, as fixed either in the relevant sales contracts or in the general conditions and terms of sale applicable.

(2) *Allowance for differences in level of trade*

24. NSK's claim for an allowance based on a supposed difference in the level of trade of the sales used to determine the normal value of the housed bearing units in the representative sample and aimed at having the total overheads and general expenses of its six domestic sales subsidiaries deducted from their sales prices was rejected.
25. The difference which, according to this company, exists in the level of trade at which its sales on the Japanese market through the intermediary of its domestic subsidiaries are made is a merely superficial distinction and, given the close links between the company and its domestic sales subsidiaries, does not correspond with a realistic examination of the facts. As mentioned at 18 above, this led to the Commission disregarding the legal status of the company's sales subsidiaries and treating them and it as a single economic unit for the purposes of determining the real or effective normal value of the products it manufactured and marketed.
26. If the Commission subsequently were to accept that there was a difference in the level of trade, and were to deduct total overheads and general costs from the prices charged by NSK's sales subsidiaries, this would be tantamount to a denial of the fact that when dealing with a company which, as in the case of NSK, possesses the financial means to enable it to establish a company structure on its domestic market which is clearly different from that of its competitors, the Commission must disregard such structure for the purposes of determining the effective normal value of the products manufactured by such a company. Moreover, such action would have the effect of encouraging foreign producers/exporters to adopt procedures which, although legal, would render any mechanism established to protect Community producers from unfair competition in the form of dumping ineffective as far as they were concerned.

Such action would have the effect of indirectly penalizing small foreign producers/exporters and thus accentuating distortions of competition. This would lead to the Commission acting against one of the very objectives of Community action, viz. the establishment of a system to prevent distortions of competition within the common market, referred to in Article 3 (f) of the EEC Treaty.

27. It must be stressed that in refusing to submit, within the period allowed, a list of its customers on the Japanese market as requested by the Commission at the beginning of the investigation, this company has failed to supply the information which would have enabled the Commission to verify the accuracy of its claim that its domestic sales to independent buyers through the intermediary of its domestic subsidiaries concerned different categories of buyers from those to whom its direct sales to independent buyers were made and led to additional costs.

28. In so doing, NSK has failed to prove that its claim was justified, as is required by Article 2 (10) of Council Regulation (EEC) No 2176/84, which clearly states that where an interested party claims an allowance in respect of the factors mentioned in Article 2 (9), it must prove that its claim is justified.

(3) *Allowance for differences in the approach used for determining normal value and export prices*

29. NSK's claim that the overheads and general expenses of its domestic sales subsidiaries and a reasonable margin of profit should be deducted from the prices charged by them for sales on the domestic market to independent buyers was also rejected.

30. The Commission considered the grounds invoked by NSK in support of its claim to be irrelevant. According to NSK, since in the case of producers/exporters having an association with importers, the total costs incurred by the importers are taken into account in determining the reconstructed export price, the same method should be used where the normal value is established on the basis of the prices charged to independent buyers by the domestic sales subsidiaries of these producers/exporters.

31. As the Community institutions have already pointed out on many occasions, this argument confuses fundamentally different problems, viz. reconstruction of export prices on the basis of resale prices to independent buyers, the determination of the normal value of products manufactured by a producer/exporter and marketed on the domestic market through the intermediary of a network of sales

subsidiaries, and the comparison between normal value and export prices.

32. Moreover, it must be stressed that in the present case the question of difference in approach does not arise due to the fact that as mentioned at paragraph 16 above the Commission has not reconstructed the export price.

(e) **Dumping margins**

33. For producers/exporters known to the Commission and who cooperated with the investigation, the normal value of the housed bearing units in the sample was compared to export prices, transaction by transaction, after making the allowances referred to at (d) above.

34. This comparison showed that all these producers/exporters had engaged in dumping.

35. Since the dumping margins for those producers/exporters who had engaged in dumping varied according to the housed bearing units in question and the Member State to which they were exported, the Commission established a weighted average dumping margin for each producer/exporter, itself weighted according to the total cif export value of all the housed bearing units which were taken into consideration in this case by this investigation, as follows:

	%
Asahi Seiko Co. Ltd :	4,58
Koyo Seiko Co. Ltd :	3,48
Nachi Fujikoshi Corporation :	1,13
Nippon Pillow Block Sales Co. Ltd :	3,77
Nippon Seiko KK :	17,99
NTN Toyo Bearing Ltd :	9,25
Showa Pillow Mfg. Co. Ltd :	3,99

36. For the producers/exporters who failed to make themselves known to the Commission within the period allowed, or who had done so but could not be included in the investigation on the grounds set out at 6 above, the dumping margin was determined on the basis of the available facts. The Commission considered the results of its investigation to be the most appropriate basis for determining the dumping margin for these producers/exporters.

37. The Commission also considered that it would be rewarding non-cooperation or making it possible to evade duty, if it were to accept that the dumping margin of the abovementioned producers/exporters could be lower than the highest dumping margin (17,99 %) established for producers/exporters who had cooperated with the investigation.

C. INJURY

(a) General

38. In order to determine the effect on Community production of the volume and prices of imports of housed bearing units originating in Japan and sold at dumped prices, the Commission took account of the relevant economic factors set out in Article 4 (2) (c) of Regulation (EEC) No 2176/84.
39. The Commission assessed the effect of imports of housed bearing units originating in Japan on the three producers referred to at 9 above, the combined production of which represents the major part of Community production of housed bearing units.
40. It did not consider it necessary to take account of the effect of imports of housed bearing units originating in Japan on the fourth European producer named in the request for review referred to at 1 above, viz. FAG Kugelfischer Georg Schäfer KGaA, since the available information showed that its production of housed bearing units represented only an insignificant share of total Community production.

(b) Factors taken into account

41. The injury was assessed on the basis of the factors referred to in Article 4 (2) of Regulation (EEC) No 2176/84, as follows:

(1) *Volume of imports*

42. The evidence available to the Commission shows that the volume of imports into the Community of housed bearing units, originating in Japan and sold for export by the companies covered by the investigation increased substantially in absolute terms between 1981 and 1985, in spite of a sharp fall in 1981 and 1982, which was, however, comparable to the fall in production of housed bearing units in Europe.
43. On the basis of the figures communicated to the Commission, it was established that these imports, which amounted to 2 811 000 units in 1981, fell to 2 060 000 in 1982 but subsequently increased steadily to reach 2 261 000 units in 1983 and 2 734 000 units in 1984. During the first five months of 1985, they reached 1 477 000 units. This represents an increase over 1981 levels of 60 000 units per month, a non-negligible increase of some 26 %.

(2) *Selling price of imported housed bearing units and price undercutting*

44. In determining the price undercutting of imported housed bearing units as compared with the prices of similar European products, the Commission restricted

its investigation to a limited number of types of housed bearing units, for reasons identical to those which motivated its decision to confine its attention to a representative sample for determining whether or not dumping had taken place.

45. For the purpose of its comparative examination of prices, the Commission retained 20 types of housed bearing unit which it had selected in order to determine whether or not dumping had taken place, those which were common to all the producers/exporters concerned or to a majority of them.
46. An analysis of the figures for the four Community national markets on which sales of housed bearing units originating in Japan are concentrated showed that the imported units were sold at appreciably lower prices than those manufactured in Europe.
47. Since the price undercutting margins varied according to the type of housed bearing unit and the place of sale, the Commission established a weighted average margin for each producer/exporter for which it possessed the necessary figures.
48. The weighted average price undercutting margins ranged from 12,11 to 21,61 %.
49. The Commission considered the above results to be the most appropriate basis on which to assess the weighted average price undercutting margin for products manufactured/exported by producers/exporters for which it did not possess the necessary information, and that it would be rewarding non-cooperation if it were to accept that this average margin could be less than the highest average margin established for the other producers/exporters (21,6 %).
50. The Commission was also able to establish, on the basis of the figures communicated, that in most cases the selling prices of the housed bearing units originating in Japan were lower than the prices needed to cover the production costs of the Community producers concerned and/or to allow them a reasonable profit margin.
- (3) *Impact on the Community industry concerned*
51. Although the information collected by the Commission on production, sales, stocks, employment and market share trends for the whole of the Community industry concerned over the reference period is not in itself sufficient to warrant the conclusion that the volume of imports and the level of price undercutting

in respect of housed bearing units originating in Japan have had a visible negative impact on the industry, the same cannot be said for the information on the other relevant factors, such as the selling prices of Community housed bearing units, the utilization of capacity, and profits and return on investment of Community producers in the housed bearing units sector.

52. The information collected shows that over the period 1 January 1981 to 31 May 1985 Community producers did not in general increase their prices in line with increases in their production costs or in line with inflation, and that they mostly sold their products at prices below those required to cover their production costs and/or to provide a reasonable profit margin from which to finance the essential investment needed to maintain their production facilities at an acceptable level, to carry out research and development and to provide their shareholders with an adequate return on their investment. This situation is obviously due to the level of price undercutting on housed bearing units originating in Japan and to the market share of such units as compared with that of housed bearing units originating in the Community (40 : 60). Moreover, the information supplied by Community producers shows that most of them have been forced to use profits from other sectors to finance their operations in the housed bearing units sector.

53. As regards utilization of capacity, the information available to the Commission shows that, despite a substantial improvement in the overall situation of the Community industry since 1982, largely due to the recovery in economic activity and consumption within the Community — from which, moreover, the Japanese producers/exporters have also benefited — the rate of utilization of capacity in the Community industry at 31 May 1985 was only 72,54 %. Indeed, this percentage would have been substantially lower had one Community producer not decided during the preceding months to reduce its production capacity. The Community industry's inability to raise its rate of utilization of capacity any higher, despite the general economic recovery, is obviously due to the attractiveness to certain customers of the selling prices of housed bearing units originating in Japan, and the European producers' fear of exposing themselves to financial and economic difficulties if they were to cut their prices any further. This fear led the only European producer achieving positive results during the reference period to withdraw from the market sector where prices are lowest, viz. the OEM sector, and to

confine its sales activities to the only sector where a reasonable profit margin could be attained, viz. the distributor sector, where its customers have so far remained particularly loyal.

54. As regards results and the return on capital invested by the Community industry in the housed bearing units sector, the figures supplied by Community producers are particularly indicative of the negative impact of imports of housed bearing units originating in Japan and the level of price undercutting on the Community industry since, with the exception of RHP, whose situation, as was said above, is rather special, their results present an almost entirely negative picture.

55. Furthermore, the information collected during the investigation confirmed the allegation made in the request for review that during the period 1 January 1981 to 31 May 1985 the stiff price competition from imports of housed bearing units originating in Japan and the consequent inability of producers established in the territory of the Community to sell their products at prices high enough to provide a reasonable profit margin, led certain Japanese producers/exporters during the period 1 January 1981 to 31 May 1985 to suspend production of housed bearing units in the Community and to limit their activities to simply exporting to the Community units manufactured in Japan.

(c) Assessment (existence of material injury and causal link)

56. The substantial increase (26 %) in imports of housed bearing units originating in Japan since 1981, the levels of price undercutting (12,11 to 21,61 %) during the period 1 December 1984 to 31 May 1985, the ratio between the market share of housed bearing units originating in Japan and those manufactured by the Community producers concerned (practically 40 : 60), and the impact these factors have had on prices for Community-made housed bearing units and the utilization of capacity, profits and return on investment of Community producers in the housed bearing units sector, have led the Commission to the conclusion that imports at dumped prices of housed bearing units originating in Japan have caused material injury to the Community industry.

57. The Commission examined whether the injury to the Community industry could be attributed to any other factors, such as the trend in demand for housed bearing units within the Community, the volume of imports from countries other than Japan and the price levels of such imports.

58. Following this examination, the Commission concluded that the trend in demand within the Community had had a positive effect on the Community industry. Indeed, the recovery in demand since 1982, and the efforts of Community producers during the reference period to rationalize and restructure their production largely explain how they managed to increase production, sales and the level of employment during the reference period in spite of the volume of imports originating in Japan and the level of price undercutting observed.

59. As regards imports from countries other than Japan and the prices of such imports, the evidence available to the Commission did not enable it to conclude that such imports had affected the Community industry.

D. COMMUNITY INTEREST

60. The difficulties which the Community housed bearing units industry continues to face as a result of imports at dumped prices of housed bearing units originating in Japan led the Commission to the conclusion that the Community interest required the review and amendment of the anti-dumping measure adopted in 1978 in respect of imports of housed bearing units originating in Japan.

E. PROVISIONAL DUTY

(a) Imposition of duty

61. In order to prevent further injury before definitive measures are adopted, the Commission considers that a provisional *ad valorem* anti-dumping duty should be imposed on imports of housed bearing units originating in Japan.

(b) Rate of duty

62. On the basis of the evidence available, the Commission considers that the rate of duty imposed on producers/exporters of housed bearing units originating in Japan should be not less than the provisional weighted average dumping margins.

63. In this respect, the Commission took particular account of the fact that the levels of price undercutting for all the producers/exporters for which it possessed the necessary information were higher in percentage terms than the provisional dumping margins.

F. CONTINUATION OF PROCEEDING

64. The need to proceed to a final determination of the facts as soon as possible demands that a period be fixed during which those interested parties, who replied to the questionnaires within the time limits fixed, can make their views known and apply to be heard,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of housed bearing units falling within sub-heading ex 84.63 BI of the Common Customs Tariff originating in Japan.

2. The housed bearing units referred to in paragraph 1 are cast- or pressed-steel housings fitted with ball bearings.

3. 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.

Exporters	Products manufactured by	Manufacturer or trade mark	Rate %
1. Asahi Seiko Co. Ltd	Asahi Seiko Co. Ltd	ASAHI	4,58
2. Koyo Seiko Co.	Nippon Pillow Block Manufacturing Co.	KOYO	3,48
3. Nachi Fujikoshi Corporation	Asahi Seiko Co. Ltd	NACHI	1,13
4. Nippon Pillow Block Sales Co. Ltd	Nippon Pillow Block Manufacturing Co.	FYH	3,77
5. Nippon Seiko KK	Nippon Seiko KK	NSK or SNR	17,99
6. NTN Toyo Bearing Ltd	NTN Toyo Bearing Ltd	NTN	9,25
7. Showa Pillow Block Mfg. Co. Ltd	Showa Pillow Block Mfg Co. Ltd	NBR	3,99
8. Other	—	—	17,99

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2176/84, the interested parties within the meaning of this Regulation may make their views known and apply to be heard orally by the Commission within one month of the entry into force of this Regulation.

Article 3

1. This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

2. Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2176/84, it shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4 August 1986.

For the Commission

Willy DE CLERCQ

Member of the Commission
