

## I

*(Acts whose publication is obligatory)*

**COUNCIL REGULATION (EEC) No 29/87**

**of 22 December 1986**

**imposing a definitive anti-dumping duty on imports of certain deep freezers originating in the Soviet Union**

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 Economic Community<sup>(1)</sup>, and in particular Article 12 thereof,

Having regard to the proposal from the Commission after consultations within the Advisory Committee set up under the above Regulation,

Whereas :

**A. Provisional action**

- (1) By Regulation (EEC) No 2800/86<sup>(2)</sup>, the Commission proposed a provisional anti-dumping duty on imports of certain deep freezers originating in the Soviet Union.

**B. Continuation of investigation**

- (2) After the provisional anti-dumping duty was imposed, the Soviet exporter, Technointorg, which had so far refused to cooperate, and certain importers asked for, and obtained, a Commission hearing. Their comments have been taken into consideration.

The Commission refused to hear one importer which had requested to be heard after the time limit laid down by Article 5 of Regulation (EEC) No 2800/86 had expired.

Technointorg asked for and was granted access to the information given to the Commission by other parties concerned in the investigation, to the extent that this was relevant for the defence of its interests, had been used by the Commission in the

investigation and was not confidential under Article 8 of Regulation (EEC) No 2176/84.

- (3) Technointorg disputed that it had refused to cooperate during the preliminary investigation : it argued that it had given instructions to its subsidiary in Belgium, EWA-Technical and Optical Equipment (EWA), to represent it in the procedure and that neither Technointorg nor EWA had received the questionnaires for exporters.

The Commission notes that EWA informed it that it had been instructed to act for Technointorg three months after the procedure had been initiated, and in any case after expiry of the time limit laid down by the Commission for sending in questionnaires. The Commission also notes that at no time did EWA ask for the questionnaire for exporters to be sent to it. Technointorg itself, moreover, admitted at the beginning of the procedure that it had received the questionnaire, and despite several reminders from the Commission it declined to supply the information requested.

- (4) After the provisional anti-dumping duty was imposed, Technointorg said it was ready to cooperate fully with the Commission.

The Commission notes that, despite these statements, Technointorg supplied no information as to its exports to the Community. In any case, as it did not make its views known within the time limits laid down when the notice of initiation of the procedure was published<sup>(3)</sup>, any information it might have submitted concerning its exports to the Community could not have been taken into consideration, without a supplementary investigation being carried out.

Quite apart from the additional administrative burden which it would involve, carrying out such a further inquiry after a provisional anti-dumping duty had been imposed might encourage parties

<sup>(1)</sup> OJ No L 201, 30. 7. 1984, p. 1.

<sup>(2)</sup> OJ No L 259, 11. 9. 1986, p. 14.

<sup>(3)</sup> OJ No C 319, 11. 12. 1985, p. 3.

not to cooperate at the initial stage of the procedure and to make their views known only when an investigation carried out without their participation had results which affected them.

### C. Dumping

- (5) Both Technointorg and EWA disputed the method used by the Commission to determine dumping.

Quite apart from the points already made in this connection by the Commission in Regulation (EEC) No 2800/86, which the Council endorses, these two parties' arguments have to be rejected for the reasons set out below.

### D. Normal value

- (6) Technointorg disputed the choice of Yugoslavia as a comparable country on the grounds that, firstly, production methods in Yugoslavia were different from those in the Soviet Union and, secondly, purchasing power there was three times higher than in the Soviet Union.

However, Technointorg did not bring forward any evidence for its statements, nor did it propose any alternative comparable country.

In any case, even if the exporter's arguments had been supported by convincing evidence, a further investigation would have been necessary and, for the reasons already set out in point 4 above, this is not possible, especially in the case in point where the exporter contests the dumping margin provisionally established in Regulation (EEC) No 2800/86 but does not deny the existence of dumping, claiming only that the dumping margin cannot be more than 70 %; even if this were true, it would imply no change in the measures to be taken as a result of the investigation.

### E. Comparison

- (7) Technointorg requested that, if the Commission did not alter its choice of comparable country, three allowances should be granted under Article 2 (9) and (10) of Regulation (EEC) No 2176/84 in order to permit a valid comparison between the export price and the normal value.
- (8) The first allowance requested was 30 % for differences between Yugoslavia and the Soviet Union as regards manufacturing procedures and component costs.

The second was 50 % for differences in the level of wages, allegedly three times higher in Yugoslavia than in the Soviet Union.

The third was 20 % for the fact that Soviet deep freezers were aimed at a different market segment and other consumers than were those of Community origin.

- (9) The differences adduced by the exporter do not fall within any of the categories of factors referred to in Article 2 (9) and (10) of Council Regulation (EEC) No 2176/84. The Council endorses the points made by the Commission in the last subparagraph of recital 14 of Regulation (EEC) No 2800/86. Specifically, the third allowance requested is relevant not for comparison between normal value and export price but for the examination of injury. The arguments put forward by the exporter are thus dealt with in recital 14 below.

As regards the first two allowances requested by Technointorg, it should be pointed out that any adjustment of the cost established in the comparable country, Yugoslavia, would mean that costs in the Soviet Union, a non-market economy country, were being taken as the basis. This is precisely the possibility that Article 2 (5) of Regulation (EEC) No 2176/84 is intended to exclude.

Consequently the arguments put forward by Technointorg concerning allowances for alleged comparative advantages are not admissible.

### F. Margins

- (10) The Council consequently confirms the Commission's conclusions in recital 19 of Regulation (EEC) No 2800/86 and establishes definitively the existence of a weighted average dumping margin of 204 %.

### G. Injury

- (11) As regards the injury caused by the dumped imports, the Commission's conclusions as set out in Regulation (EEC) No 2800/86 have been contested by Technointorg.
- (12) The exporter firstly argued that the Community market for deep freezers was divided into two segments: an upper range catered to by Community producers and consisting of consumers with high purchasing power who chose higher-quality, better-known products, and a lower range catered to by exporters in Eastern European countries and made up of consumers with more modest purchasing power. The exporter claimed that these two market segments were quite distinct and that there was consequently no cause-and-effect relationship between the increase in imports from the Soviet Union and the fall in Community production.

The exporter also argued that its exports to the Community in 1981 were very small and that it was a recognized factor in economic life that any product initially unknown to consumers generally showed spectacular expansion over the first few years. The exporter claimed that its sales to the Community would now be beginning to level off.

The exporter also claimed that its share of the Community market was low and could not cause any injury to the Community industry. In this regard the exporter also contested the aggregation of the effect of all dumped imports.

(13) Quite apart from the points noted by the Commission in Regulation (EEC) No 2800/86, which the Council endorses, the comments made by Technointorg cannot be accepted, for the reasons set out below.

(14) As regards the market consisting of different segments, Technointorg provided no satisfactory evidence to support its arguments. In particular it did not show that its products and those of the Community industry were not 'like products' within the meaning of Article 2 (12) of Regulation (EEC) No 2176/84. Consequently, in accordance with Article 4 (4) of that Regulation, the effect of the imports covered by the investigation are to be assessed in relation to production of deep freezers in the Community. To the extent that the exporter's arguments imply that there is a difference in quality between Soviet and Community deep freezers, it is to be pointed out that, in determining undercutting, the Commission compared like products, as regards capacity, appearance and fittings. Even, indeed, if the existence of different categories of buyers were admitted, this would not necessarily mean that there was a difference in quality between the products concerned.

As regards trends in the volume of imports and the market share for which they account, these are only two of the factors which, under Article 4 (2) of the above Regulation, are to be taken into consideration in examining the injury.

At any event, while consumption in the Community remained steady, imports from the Soviet Union increased by more than 20 000 units from 1981 to 1985. Thus, on the markets where these imports were concentrated, their market share increased over the same period from 0,8 % to 2,5 % in the United Kingdom and from 1,4 % to 8,3 % in Belgium. Technointorg's statements about the future trend of its exports to the Community,

unsupported by any conclusive evidence, are not relevant to the examination of existing injury to the Community industry: as regards the volume of imports, Article 4 (2) (a) of the above Regulation lays down only that what is to be established is 'whether there has been a significant increase'.

As regards the aggregation of imports, the Council confirms the Commission's conclusions in recital 24 of Regulation (EEC) No 2800/86.

(15) None of the arguments put forward by Technointorg call into question the conclusions as regards the injury to the Community industry which the Commission reached in its preliminary conclusions. Consequently the Council confirms these conclusions.

#### H. Undertakings

(16) Technointorg offered two undertakings concerning future exports to the Community.

After consultations the Commission did not accept either of these undertakings. It informed Technointorg of the reasons for this decision.

#### I. Community interest

(17) The importer, Peja Import BV, argued that an anti-dumping duty as imposed by the Commission in Regulation (EEC) No 2800/86 had had and would have the effect of stopping imports into the Netherlands of deep freezers originating in the Soviet Union. It also argued that this would have an adverse effect on its own exports under offset agreements with Eastern European countries. The Council has taken these comments into account but, because of the difficulties facing Community production of deep freezers, and in view of the economic and social importance of such production, the Council concludes that it is in the Community interest to take measures. The defence of Community interest thus requires the imposition of a definitive anti-dumping duty on imports of certain deep freezers originating in the Soviet Union.

#### J. Level of duty

(18) In view of the above definitive conclusions, the definitive anti-dumping duty must be of the same amount as the provisional anti-dumping duty, i.e. 33 % of the net free-at-Community-frontier price before duty. This is less than the dumping margin established and should suffice to eliminate the

injury caused to Community production by imports from the Soviet Union, in view of the sale price necessary to provide efficient Community producers with a reasonable profit.

#### K. Collection of the provisional duty

- (19) The amounts secured by way of provisional anti-dumping duty should therefore be collected in their entirety.

HAS ADOPTED THIS REGULATION:

#### *Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of deep freezers falling within subheading No ex 84.15 C II of the Common Customs Tariff — corres-

ponding to Nimex codes 84.15-41 and 84.15-46 — originating in the Soviet Union.

2. The rate of the duty shall be 33 % of the net free-at-Community-frontier price before duty.

3. The provisions in force concerning customs duties shall apply.

#### *Article 2*

The amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 2800/86 shall be collected definitively.

#### *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, 22 December 1986.

*For the Council*

*The President*

G. SHAW

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