COMMISSION REGULATION (EEC) No 3643/84

of 20 December 1984

imposing a provisional anti-dumping duty on imports of electronic typewriters originating in Japan and terminating the anti-dumping proceeding with regard to Nakajima All Co. Ltd

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 9 and 11 thereof,

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

Whereas :

A. Procedure

(1) In March 1984 the Commission received a complaint lodged by the Committee of European Typewriter Manufacturers (CETMA) on behalf of producers representing substantially all Community production of electronic typewriters. The complaint contained evidence of dumping and of material injury resulting therefrom, which 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* (2), the initiation of an anti-dumping proceeding concerning imports into the Community of all kinds of electronic typewriters falling within subheading ex 84.51 A of the Common Customs Tariff, corresponding to NIMEXE codes 84.51 ex 14, ex 19 and ex 20, originating in Japan, and commenced an investigation.

(2) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

All the known producers and exporters and some importers made their views known in writing. Some of the exporters concerned requested and were granted hearings.

(3) 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 :

EEC producers :

— Ing. C. Olivetti & C. SpA, Ivrea (Italy),
— Olympia Werke AG, Wilhelmshaven (Federal Republic of Germany),
— Triumph-Adler Aktiengesellschaft für Büro- und Informationstechnik, Nürnberg (Federal Republic of Germany).

Exporters to the EEC :

— Brother Industries Ltd (Nagoya),
— Canon Inc. (Tokyo),
— Nakajima All Co. Ltd (Tokyo and Nagano),
— Sharp Corporation (Osaka),
— Silver Seiko (Tokyo),
— TEC Tokyo Electric Co. Ltd (Tokyo),
— Tokyo Juki Industrial Co. Ltd (Tokyo and Yukote),
— Towa Sankiden Corporation (Tokyo).

EEC importers :

— Brother International (Belgium) SA, Zellik (Belgium),
— Brother International Maskin A/S, Ishøj (Denmark),
— Brother International GmbH, Bad Vilbel (Federal Republic of Germany),
— Brother Office Equipment Division, Manchester (United Kingdom),
— Brother International Corporation (Irl) Ltd, Dublin (Ireland),
— Canon Copier Belgium NV/SA, Diegem (Belgium),
— Canon Europa NV, Amsterdam (Netherlands),
— Canon Europa SA, le Blanc Mesnil (France),
— Canon-Rechner Deutschland, München (Federal Republic of Germany),
— Canon Verkoopsorganisatie Nederland BV, Heemstede (Netherlands),
— Canon Italia SpA, Bussolengo (Italy),
— Canon (UK) Ltd, Croydon (United Kingdom),
— NV SCM Europe SA, Brussels (Belgium),
— Olympia-Werke AG, Wilhelmshaven (Federal Republic of Germany),

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No C 83, 24. 3. 1984, p. 4.

— Sharp Electronics (Europe) GmbH, Hamburg (Federal Republic of Germany),

— Sharp Electronics (UK) Ltd, Manchester (United Kingdom),

— Silver Seiko International GmbH, Keltersbach (Federal Republic of Germany),

— Silver Reed, Watford (United Kingdom),

— TEC Belgium SA, Brussels (Belgium),

— TEC France, Gentilly (France),

— TOWA Sankiden — Welco, Paris (France).

(4) Tottori Sanyo Electric Co. requested the Commission to carry out an investigation at its offices in Japan. However, since this company had neither manufactured nor sold any electronic typewriters during the period under investigation, the Commission decided that no investigation was warranted for this company.

(5) The Commission requested and received detailed written submissions from all complainant Community producers, all exporters and some importers and verified the information therein to the extent considered necessary.

(6) The investigation of dumping covered the period 1 April 1983 to 31 March 1984.

B. Normal value

(7) For Brother and Silver Seiko, both of whom sell the like product on the Japanese market, normal value was provisionally determined on the basis of the weighted average domestic prices of those models which were sold in significant quantities in Japan. For all other models, where sales volume on the domestic market was not sufficiently large to allow the determination of a normal value on that basis, normal values was established on the basis of constructed value.

(8) Both exporters concerned objected to the use of domestic prices for the establishment of normal values on the grounds that the volume of sales on the Japanese market was too small and that it did not reach the level of 5 % of exports to non-EEC countries that would have been used as a criterion by the American administration in similar circumstances. It was further argued that the Commission had in the past discarded the domestic market as a basis for normal value wherever the volume of domestic sales had been low in relation to total exports.

(9) The Commission carefully considered the arguments put forward. It notes that under GATT and the Community legislation prices on the domestic market in the country of exportation are, as a rule, the basis for determining normal value. However, the legislation of other trading partners and the Community's past practice show that where the volume of sales on the domestic market is relatively small, account must be taken of the fact that the prices of such sales may be influenced by other than normal commercial considerations and that their quantities may be residual or so negligible that they cannot be considered as reliably reflecting pricing in the ordinary course of trade.

The Commission therefore considers that where there is a disproportion between the sales volumes on the domestic market and the sales volumes to the Community, the domestic market should be disregarded as a basis for the determination of normal value. Hitherto this has been decided by the Commission on a case by case basis. The Commission now considers that in cases such as this it is appropriate to apply a threshold below which sales on the domestic market should be disregarded. Given the commercial importance of the Community as an import market, the Commission considers it reasonable to apply this threshold in relation to exports to the Community and at a level of 5 %.

(10) In the present case, where the volume of the sales of individual models on the domestic market was equal to or less than 5 % of the volume of exports to the Community, the Commission established normal value on the basis of the constructed value. For all other models, it used domestic prices.

(11) Consequently, for all models exported by Nakajima, TEC and Towa and for certain models exported by Brother and Silver Seiko, normal value was established on the basis of the constructed value. For the remaining models exported by Brother and Silver Seiko, normal value was established on the basis of domestic prices.

(12) For Canon and Sharp, certain detailed information in respect of domestic sales remains to be clarified; therefore, for the purpose of the provisional determination, normal value was established for all models on the basis of the constructed value.

(13) Brother Industries Ltd (BIL) contended that the domestic selling prices to unrelated dealers of its related trading company Brother Sales Ltd (BSL) were not controlled by BIL since it does not wholly own BSL. Therefore these prices should not be used to determine normal value for BIL's export operations. It was also argued by BIL that the use of said domestic selling prices amounted to a reconstruction of the domestic price which is not provided for in Regulation (EEC) No 2176/84

(14) The Commission considers that BIL has effectively a controlling interest in BSL since all other shareholders have individually only very minor shareholdings and that the main reason for BSL's existence is to sell BIL's products in Japan. The trading company has therefore been treated as the sales branch of the parent company in Japan. Consequently, the Commission considered that BSL's selling price constituted a comparable price actually paid 'in the ordinary course of trade' within the meaning of Article 2 (3) (a) of Regulation (EEC) No 2176/84 and it has therefore used this price for determining normal value. This in no way corresponds to a reconstruction of the domestic selling price.

(15) The preliminary investigation has shown that the prices of Tokyo Juki's sales on its domestic market were, over an extended period of time and in respect of substantial quantities, lower than all costs both fixed and variable incurred in their production. The normal value for this company was therefore determined on the basis of the constructed value.

(16) The constructed value was computed by taking all costs both fixed and variable in the country of origin of materials and manufacture plus selling, administrative and other general expenses and a profit margin of 10 % considered to be reasonable reasonable in the light of the companies' general performance during a representative profitable period in so far as sales of this product on the domestic market were concerned.

(17) In the case of Sharp, all information necessary to compute the normal value was made available only for the second half of the period under investigations. As to the first half, Sharp stated that information about cost of material had been destroyed with the exception of the last month during which production took place, and that information about labour costs and factory overheads was extremely difficult, if not impossible to compile.

On the basis of other data collected in the course of the investigation the Commission concluded that the constructed value in the period suggested by Sharp was not representative of constructed value in the entire period of investigation. Consequently, cost elements for the months lacking were determined on the basis of evidence available, i.e. by reference to the cost evolution found for other exporters.

(18) In the case of Sharp and Makajima certain cost allocations in respect of direct and indirect labour and factory overheads were found unacceptable and were replaced by allocations made in proportion to the turnover pursuant to Article 2 (11) of Regulation (EEC) No 2176/84.

(19) Several exporters claimed that selling, general and administrative expenses (S, G & A) incurred by their sales organizations in Japan should not be included in the calculation of constructed value because *inter alia* export transactions were not made by these organizations, and such expenses were directly attributable to domestic sales and because the sales organizations in Japan should be assimilated to the related importers in the EEC whose costs are deducted in order to construct export price.

(20) The Commission considers that such expenses should be included in the determination of normal value for the following reasons :

— where normal value is based on domestic selling prices these prices, if they are in the ordinary course of trade, cover all S, G & A, incurred by the sales organizations,

— where normal value is based on constructed value, under the structure of Regulation (EEC) No 2176/84 this surrogate method should yield the same result as above. Article 2 (3) (b) (ii) therefore expressly provides that S, G & A expenses be included.

However, this does not preclude the possibility in both cases of subsequently reducing the normal value, as determined, by those S, G & A expenses for which deductions are permissible under the terms of Article 2 (10) (c), which is not generally the case for overheads and general expenses.

(21) In allocating its cost of production between products, Tokyo Juki based certain of its calculations on standard output and the figures were adjusted accordingly by the Commission so as to allocate on the basis of actual production quantities.

(22) In determining the amount to be included for S, G & A expenses the Commission did not accept certain cost allocations made by certain companies based on an alleged direct relationship between these overhead expenses and the sales under consideration, since the existence of such a direct relationship was not satisfactorily demonstrated. Allocations for the costs in question were accordingly made in proportion to the turnover for each product and market under consideration.

C. Export price

(23) With regard to exports by Japanese firms to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the product sold.

(24) In all other cases where exports were made to subsidiary companies in the Community, export prices were constructed on the basis of the prices at which the imported product was first resold to an independent buyer, suitably adjusted to take account of all costs incurred between importation and resale including all duties, and of a profit margin of 5 %. This profit margin was considered reasonable in the light of the profit margins of independent importers of the product concerned. The costs incurred included specifically the following :

— give-aways and sales incentives in kind,

— advertising campaigns directly financed by the exporter.

(25) Certain costs borne directly by an exporter were found to relate to personnel seconded by the exporter in order to collate market and product information, which did not, however, relate to the product in question. These costs were therefore ignored.

D. Comparison

(26) In order to put normal value and export prices on a comparable basis the Commission took account, where appropriate, of differences in conditions and terms of sale affecting price comparability and allowances were made for differences in credit terms, commissions and transport.

All comparisons were made at ex-works level.

E. Margins

(27) Normal value was generally set against export prices on a transaction-by-transaction basis. However, for the purposes of the Commission's preliminary findings with regard to dumping, monthly weighted averages were used for those exporters whose volume of transactions was so large that a transaction-by-transaction analysis would have unduly delayed the taking of a provisional decision.

(28) The above preliminary examination of the facts shows the existence of dumping in respect of imports of electronic typewriters originating in Japan, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

These margins vary according to the exporter concerned, the weighted average margin for each of the exporters investigated being as follows :

Brother Industries Ltd	43,7 %
Canon Inc.	33,3 %
Nakajima All Co. Ltd	1,2 %
Sharp Corporation	21,1 %
Silver Seiko Ltd	26,6 %
TEC Tokyo Electric Co. Ltd	6,9 %
Tokyo Juki Industrial Co. Ltd	34,2 %
Towa Sankiden Corporation	20,2 %

(29) In view of the characteristics of the market for the product concerned, the dumping margin found for Nakajima All Co. Ltd should be regarded as *de minimis* and consequently this company is excluded from protective action.

F. Injury

(30) With regard to the injury caused by the dumped imports, the evidence available to the Commission shows that sales in the Community of electronic typewriters originating in Japan increased from 145 277 units in 1982 to 368 722 units in the year ended 31 March 1984, with a consequent increase in the market share held by Japanese exporters from 28,0 to 39,7 % during the same period.

(31) The resale prices of the dumped imports generally undercut the prices of the Community producers during the period under investigation by varying degrees depending on models and markets. Although there were instances of no undercutting, the latter generally ranged between 11,4 and 30 % and in some cases reached 48,5 %.

The impact of the low-priced imports has been to decrease significantly the profitability of Community producers. For the two producers who have consistently made profits over the period, the average return on sales was reduced by more than 46 % between 1982 and the year ended 31 March 1984, although from a low base in both cases.

Profitability on electronic typewriters has now reached a level where new investments in research and development and facilities which are vital for the future of the electronic typewriter industry are threatened. Due to significant price depression the remaining Community producer finds it impossible to increase its sales prices to a level which would cover its costs and thus incurs considerable losses.

(32) The Commission has considered whether injury has been caused by other factors such as the volume and prices of undumped imports or the stagnation of demand. It has been established that imports from countries other than Japan remained stable between 1982 and 1983/84 and were not at prices such as to cause injury to Community producers. With regard to consumption the investigation has shown that between 1982 and 1983/84 the market for these products in the EEC increased by almost 79 %. During the same period sales of the Community producers on the EEC market did not increase as rapidly as demand and as a result their market share fell from about 63 % in 1982 to about 51 % in 1983/84.

(33) In assessing injury the Commission took into account that the dumping margin on Nakajima's sales in the EEC was regarded as *de minimis*.

Due regard was also given to the fact that all of Tokyo Juki's sales in the Community were to one of the complainants. It was considered that the Community industry excluding that complainant was injured by these imports.

(34) Quite apart from the actual injury caused during the period under consideration, the preliminary investigation has shown that the capacity of Japanese electronic typewriter manufacturers is approximately 2,5 million units per annum. Since sales of alpha-numeric typewriters in Japan are limited, most of the electronic typewriters produced in Japan are destined to be exported, and since the market for this product in the EEC is less developed than in the US it is very probable that a large proportion of the Japanese machines will be exported to the EEC in the immediate future, thus further posing a threat of injury in addition to the actual injury already incurred.

(35) The volume of the dumped imports, their market share and the prices at which they are offered for sale in the Community led the Commission to determine that the effects of dumped imports of electronic typewriters originating in Japan taken in isolation have to be considered as constituting material injury to the Community industry concerned.

G. Community interest

(36) The preliminary investigation has shown that the whole future of the business equipment industry in the Community may depend on the viability of the product concerned. Because of the extent of the injury caused the Commission has come to the conclusion that it is in the Community's interest to take action. In order to prevent further injury being caused during the remainder of the proceeding, this action should take the form of a provisional anti-dumping duty on imports of electronic typewriters from Japan with the exception of those imported from Nakajima All Co. Ltd.

H. Undertaking

(37) Kyushu Matsushita Electric Co. Ltd (Matsushita), a producer which did not sell on the Japanese market and which had never exported to the Community, requested exclusion from the scope of any protective measures taken in connection with this product and offered an undertaking regarding future exports. In support of its offer the company submitted preliminary information relating to costs of production for the models which it intends to export to the EEC.

(38) The reasons why, in general, undertakings from potential exporters should not be accepted have already been set out in Council Regulation (EEC) No 3337/84 [1]. In the particular case of Matsushita the Commission considers that the data presented by the company are not relevant to its investigation since they do not relate to the same period of time for which investigations have been carried out with those Japanese producers which did export to the Community.

Furthermore, in view of the fact that is has been stated that any future sales in the Community will be made through Matsushita's subsidiaries, which have not been investigated by the Commission, it is not possible to determine satisfactory future export prices to the EEC for Matsushita's products.

[1] OJ No L 311, 29. 11. 1984, p. 26.

(39) In the light of the foregoing the Commission has decided, after consultation, not to accept the undertaking offered by Matsushita. However, if the company begins to export to the Community it may be appropriate to apply the provisions of Articles 14 and 16 of Regulation (EEC) No 2176/84 relating respectively to reviews and refunds of anti-dumping duties.

I. Rate of duty

(40) Having regard to the extent of injury caused, the rate of such duty should correspond to the margin of dumping provisionally estimated.

(41) A period should be fixed within which the parties concerned may make their views known and request a hearing,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of electronic typewriters falling within subheading ex 84.51 A of the Common Customs Tariff, corresponding to NIMEXE codes 84.51 ex 14, ex 19 and ex 20, originating in Japan.

2. The duty shall not apply to electronic typewriters produced and exported by Nakajima All Co. Ltd in respect of which the proceeding is hereby terminated.

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

Manufacturers/Exporters	*Rate of anti-dumping duty (%)*
Brother Industries Ltd	43,7
Canon Inc.	33,3
Sharp Corporation	21,1
Silver Seiko Ltd	26,6
TEC Tokyo Electric Co. Ltd	6,9
Tokyo Juki Industrial Co. Ltd	34,2
Towa Sankiden Corporation	20,2
Others	43,7

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

5. 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 2176/84, the parties concerned may make known their views and apply to be heard orally by the Commission within one month of the entry into force of this Regualtion.

Article 3

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

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2176/84, Article 1 of this Regulation 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, 20 December 1984.

For the Commission

Wilhelm HAFERKAMP

Vice-President