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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1698/85

of 19 June 1985

imposing a definitive anti-dumping duty on imports of electronic typewriters originating in Japan

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Whereas :

A. Provisional action

(1) The Commission, by Regulation (EEC) No 3643/84 [2], imposed a provisional anti-dumping duty on imports of electronic typewriters originating in Japan and terminated the proceeding with regard to Nakajima All Co. Ltd. That duty was extended for a maximum period of two months by Regulation (EEC) No 1015/85 [3].

B. Subsequent procedure

(2) Following the imposition of the provisional duty all exporters and a number of related and unrelated importers, with the exception of Nakajima All and those firms importing Nakajima All's products into the Community, as well as the complainant Community industry requested, and were granted, an opportunity to be heard by the Commission. The Commission informed them in detail of the facts on which it had based its provisional findings. They also made written submissions making known their views on the findings.

(3) Upon their request, parties were also informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were granted a period within which they could make representations subsequent to these disclosure meetings. Their comments were taken into consideration.

C. Normal value

(4) The Commission had, for the imposition of the provisional duty, determined normal value on the basis of domestic sales prices for those models for which it was satisfied that they were sold in significant quantities in Japan ; for all other models normal value was determined on the basis of constructed value. In this context the Commission considered it appropriate and in the interest of legal certainty to establish that sales on the domestic market should normally be used for the purpose of establishing normal value if they exceed 5 % by volume of exports to the Community.

The possibility of determining normal value on the basis of a comparable price of the like product when exported to a third country was considered ; however, the only third country which appeared appropriate was one to which some of of the exporters sold through related importers and therefore it would have been likely that the export price of that market would have to be constructed.

(5) Some exporters argued that such a threshold should not be fixed because its use would prevent the Community from taking into account special circumstances in general and in this case in particular.

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[1] OJ No L 201, 30. 7. 1984, p. 1.
[2] OJ No L 335, 22. 12. 1984, p. 43.
[3] OJ No L 108, 20. 4. 1985, p. 18.

However, the establishment of a threshold provides legal certainty which has hitherto been lacking. It is evident that in each case the Community institutions should consider whether any particular circumstances necessitate or warrant an exception from this general practice.

The Japanese market is not too small either relatively or absolutely to be used as a basis of comparison. In view of this there was no reason why the Community should deviate from the general line of establishing normal value on the basis of the domestic sales prices for those electronic typewriter models for which sales in Japan were greater than 5 % of export sales to the Community.

(6) Brother argued that such a threshold should be established for future cases only. However, nothing in the Community's previous practice could lead Brother to believe that domestic sales of this volume would not be used for the purpose of determining normal value.

(7) Consequently for those models exported by Brother, Canon and Silver Seiko which were sold in sufficient quantities for consumption on the Japanese market, normal value was established on the basis of the weighted average of the domestic sales prices actually paid or payable in the ordinary course of trade.

(8) For this purpose the sales prices charged by the Japanese producers' sales companies to their customers were used.

This approach was contested by Brother, Silver Seiko and Canon. It is, however, considered that since Article (2) (3) (a) of Regulation (EEC) No 2176/84 required normal value to be based on prices actually paid or payable in the ordinary course of trade, Article 2 (7) allows the Commission to disregard the prices charged in transactions between associated companies, unless the prices and costs, involved are comparable to those involved in transactions between parties which have no such link.

In this case, since there were no sales by the manufacturing companies to non-associated third parties, the Commission could not satisfy itself that the prices and costs involved in the sales to the sales companies corresponded to transactions between non-associated companies.

The evidence given during the investigation showed that the manufacturing company and the sales company from an integral part of the corporate structure in which these sales companies have functions which are substantially similar to those of a sales branch or sales department. The fact that they are legally separate entities does not alter the existence of a single economic entity. What is relevant is not the legal structure but the fact that the principal function of these sales companies is to sell or to facilitate the sale of the corporate product, that they are either wholly owned or controlled by the corporate parent company, or that there are strong links with respect to management personnel and staff.

One or more of these three conditions were fulfilled for those firms investigated. Consequently, their sales companies are to be considered part of their respective corporate structures and it is only the sales prices of these sales companies to their customers that can be relied on to reflect the true normal value of the product.

With respect to Brother the provisional findings as stated in recitals 13 and 14 of Regulation (EEC) No 3643/84 are confirmed.

(9) The complainant Community industry maintained that normal value for Canon should not be determined on the basis of the prices paid to Canon Sales Company (CSC) but on the prices paid to Canon-related dealers which had bought from CSC. However, after scrutiny of a number of agreements entered into by CSC and Canon-related dealers, the Commission is satisfied that the prices paid to CSC were comparable to those in sales by CSC to parties without links with Canon.

(10) Normal value for all other models for which there were no sales in the quantities thought necessary on the Japanese market was established on the basis of constructed value, as for the provisional determination, by computing cost of production to which was added a reasonable margin of profit. The cost of production was computed on the basis of all costs, in the ordinary course of trade, both fixed and variable, of materials and manufacture, plus a reasonable amount for selling, administrative and other general expenses.

(11) In general, the exporters did not contest the determination of fixed and variable costs of materials and manufacture.

(12) Canon requested that factory costs be established on the basis of 'standard costs' which are actual costs at a given time reduced by cost savings which it is hoped to make in a future period. Whereas cost savings are, of course, to be taken into consideration if made during the period of investigation, the method proposed by Canon would have resulted *inter alia* in the use of artificial costs for certain models which would have been below the real variable costs during the period in question, which is clearly unacceptable. Consequently, factory costs were determined on the basis of actual costs at given times. These were increased by an amount to compensate for the below-cost purchases by Canon of a component manufactured by a Canon manufacturing unit.

(13) In allocating its cost of production between products Towa (and not Tokyo Juki as was stated inadvertently in the provisional determination) 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 during the investigation period.

(14) In the case of Sharp the findings resulting from the provisional determination were changed in so far as additional information concerning labour costs and factory overheads for the first six months of the investigation period was taken into consideration.

Sharp also submitted a revised cost allocation concerning certain overhead costs which was largely accepted. However, Sharp claimed to allocate certain research and development expenditure, which in fact concerned only electronic typewriters, partly to other products and this could not be accepted. Sharp also claimed to allocate research and development costs during the investigation period to subsequent sales : this was not accepted because Sharp had not applied this policy elsewhere.

(15) Certain exporters contested the determination in connection with selling, administrative and general expenses. It was claimed in particular that no such expenses should be included in the constructed value either because no sales were made on the domestic market (and therefore no expenses were incurred there) or because sales were normally made through a legally independent sales company the costs of which it is said should have no bearing on the constructed value. Although this point was already mentioned in recital 20 of Commission Regulation (EEC) No 3643/84, it was reiterated by certain exporters.

It is considered that the exporters' argument is contrary to Article 2 (3) (b) (ii) of Regulation (EEC) No 2176/84 and is moreover inconsistent with the structure and purpose of a normal value determination on the basis of constructed value. This method is designed to lead to a normal value as if sales on the domestic market had taken place. Since sales prices have necessarily to reflect selling, administrative and general expenses incurred by the seller, an amount of such expenses equal to that usually reflected in sales prices in the ordinary course of trade of a product of the same general class or kind has to be included in the constructed value. The constructed price should include such an amount whether sales on the domestic market have taken place or not. Further, since sales in the ordinary course of trade are made exclusively through wholly owned or controlled sales companies and since these have to be considered as sales branches of the exporters' corporate structure, the selling, administrative and general expenses incurred by the relevant sales company of each exporter are the determining cost factors to be taken into consideration for the determination of the individual exporter's constructed normal value.

The amount of these costs was generally determined by allocating costs to the product *pro rata* to turnover.

This method was contested by Tokyo Juki and Silver Seiko which considered that their own allocation should have been used. However, the firms involved did not submit satisfactory proof that their allocation method reflected more appropriately the costs incurred in relation to this product than an allocation based on turnover.

(16) When provisionally computing the constructed value a profit margin of 10 % was included. The provisional conclusion was based on general information received at the time from the companies concerned. However, some exporters contested the use of a 10 % margin. Therefore, the Commission analyzed the profitability only of the domestic sales of electronic typewriters made by those three exporters for which normal value was determined on the basis of domestic sales.

This analysis revealed very susbstantial profit margins at corporate level, the lowest being 32,39 % on turnover. Since a constructed value has to include a reasonable margin of profit and Article (2) (3) (b) (ii) provides that the addition for profit shall not exceed the profit normally realized, it is considered that when deciding what constitutes a reasonable profit, the profit normally realized should usually be used unless there are reasons to the contrary. Therefore, it was considered reasonable finally to compute the constructed value for the three exporters in question using their respective profit margins on their sales on the domestic market.

As to those exporters for which no individual profit margin could be determined owing to lack of sufficient sales on the domestic market, it was considered reasonable to include in the constructed value of their models a margin of 32,39 % on turnover which corresponded to the lowest profit margin found for the three companies mentioned above which is to be considered as a normal profit margin on the domestic market.

Some exporters now claim that this profit margin is excessive and results from special circumstances on the domestic market. However, both Community legislation and international rules governing the inclusion of a profit margin in the normal value computation indicate that a realistic profit margin be included. No profit margin can be more reasonable to use than the actual margin. A constructed value is merely a substitute for a domestic price as a basis for normal value and the use of a domestic price cannot be challenged on the grounds that the profits made are exceptional, excessive or result from special circumstances.

(17) Some exporters claimed that, at least in their case, the profit margin of 10 % as for the provisional determination, should have been maintained because it was used in the case of Nakajima All. Whereas it is correct that for the provisional finding the normal value determination for Nakajima All was based on a 10 % profit margin, that *de minimis* dumping was found and that, consequently, the proceeding was terminated for this exporter, it has meanwhile been decided to re-open the proceeding concerning Nakajima All's case. As a result, exporters from Japan will all be subject to the same criteria and the claim referred to above has to be rejected.

(18) The Council has considered the evidence which led to the other conclusions which had been provisionally reached and referred to in Regulation (EEC) No 3643/84. These provisional conclusions were confirmed by the final results of the investigation.

D. Export price

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

(20) In all other cases where exports were made to subsidiary companies in the Community, it was considered appropriate, in view of the relationship, that export prices be 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 taxes.

(21) Following representations made by the exporters after the provisional determination, certain modifications to the export prices initially calculated were made. These modifications concern in particular :

— airfreight rates actually paid for the transport of certain electronic typewriters,

— extended payment conditions granted by certain subsidiaries and financing costs resulting therefrom,

— net sales prices to the first independent buyer in the Community after the deduction of give-aways and sales incentives in kind,

— transport costs within the Community.

It was claimed that certain advertising costs relating to campaigns on the Community market and incurred by the parent company in Japan should be allocated to all electronic typewriters and amortized over the lifetime of the product. It was found, however, that the campaigns related to three specific models only in three Member States. In addition the costs in question were effectively incurred and paid for during the period of investigation, just like other advertising costs in previous and, no doubt, in subsequent years.

(22) Brother claimed that for the construction of the export price no profit margin for the related importer should be taken into consideration.

This, however, is contrary to Article 2 (8) (b) of Regulation (EEC) No 2176/84 which provides for a reasonable profit margin to be included and, consequently, this claim has to be rejected.

(23) Export prices were finally adjusted by a profit margin for the related importer of 5 % which was considered reasonable in the light of the profit margins of independent importers of the product concerned. One exporter which sells through its subsidiary in one Community Member State on a Common Customs Tariff duty-unpaid basis to exclusive dealers in other Community Member States maintained that for these sales a profit margin of less than 5 % should be used. However, in view of the profit margin of another independent importer in a similar situation, the Commission concluded that no change for these sales was warranted.

E. Comparison

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

(25) Some parties claimed that allowance should be made in addition for overheads and general expenses incurred by the domestic sales companies on the grounds that all of their costs bear a direct relationship to the sales on the domestic market because they were exclusively engaged in domestic sales.

This request cannot be granted. In the first place, this claim refers to a formal distinction between the sales branches of the manufacturing company and its sales companies, which cannot be accepted in view of the close relationship between the manufacturer and its sales subsidiaries, deriving from the overall control exercised by the former, which has already been referred to under recitals 8 and 15 above. Therefore the argument advanced by the parties — whereby the relationship of overheads with sales differs between the manufacturing and the sales companies — is not founded.

Moreover, under Regulation (EEC) No 2176/84 allowances can only be granted for differences in the factors mentioned in Article 2 (9). One of these factors is 'conditions and terms of sale'. This is a relatively narrow technical term referring to the obligations inherent in a sales contract, which may be laid down in the contract itself or in general conditions of sale issued by the seller. What is decisive is whether the costs are strictly necessary to fulfil the terms of the sales under consideration. Where this first criterion is met, it must be shown in additon that these costs bear a direct functional relationship to the sales under consideration, i.e. that they are incurred because a particular sale is made. In general, overheads and

general expenses, wherever they occur, do not have such a direct functional relationship and are therefore not allowable. There is no reason to deviate from this guideline because of formal legal differences such as the attribution of overall management functions to one company rather than another or to more than one company, the corporate structure of the group, or the handling of domestic sales by a sales subsidiary or a sales department.

Some exporters claimed allowances with respect to the entire costs of their sales companies (and one exporter claimed allowance for profit as well) to take account of an alleged difference in the level of trade. Such allowance would, however, presuppose that there is a difference in the categories of purchasers served resulting in a cost difference for the exporter. It was found, however, that the composition of the categories of customers is similar for both domestic and export sales. Therefore no adjustment could be granted.

(26) Some parties also raised the point that since in the case of associated importers, all costs of the importer are taken into account for the purpose of constructing the export price, an identical approach should be followed where sales on the domestic market are being made indirectly through an associated sales company. This argument confuses two different issues, namely the construction of the export price on the basis of a resale price of a related importer, and the comparison between normal value and export price. For the purpose of constructing the export price, Regulation (EEC) No 2176/84 prescribes the deduction of all costs incurred between importation and resale. This is designed to arrive at an export price which is not influenced by the relationship between the exporting company and its associated importers. As to the comparison between normal value and export price other rules apply which have led to price adjustments for all allowable factors, as explained under recital 24 above.

F. Dumping margins

(27) Normal value was generally compared with export prices on a transaction-by-transaction basis. The definitive 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.

(28) Brother claimed that for the purpose of establishing the dumping margin, no comparison on a model-by-model basis should be made. This argument could not be accepted since Articles 2 (2), 2 (3) (a) and 2 (3) (b) of Regulation (EEC) No 2176/84 stipulate that a comparison has to be made between like products.

(29) All exporters, namely:

— Brother Industries Ltd,
— Canon Inc.,
— Sharp Corporation,
— Silver Seiko Ltd,
— TEC Tokyo Electric Co. Ltd,
— Tokyo Juki Industrial Co. Ltd,
— Towa Sankiden Corporation,

were found to be dumping at varying margins. The weighted average margin for these exporters varied between 31 and 76 %.

For those exporters which neither replied to the Commission's questionnaires nor made themselves otherwise known, or for those which made themselves known as potential exporters in the course of the investigation, dumping was determined on the facts available.

In conformity with past practice it is considered appropriate to use the highest dumping margin for this group of exporters. However, 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.

G. Injury

(30) Two exporters claimed that there were two distinct markets for electronic typewriters; one for what was called 'portable' or 'compact', and the other for 'professional' typewriters. With regard to the latter the exporters claimed that no injury was caused by Japanese imports.

The exporters have not offered any support for this claim. In fact it was established during the investigation that Community production covered

all the models of electronic typewriters in question and, in consequence, all models were investigated.

Furthermore, it was found that, in general, production of the more expensive typewriters also suffered injury and the findings set out in recital 36 confirm this.

In addition, with further technical development, the borderline between different groups of models, if it has ever existed, is disappearing so that it is not appropriate to artificially divide the electronic typewriter market into groups of models.

(31) Some exporters commented on the provisional findings with regard to the development of the Community industry's profitability without, however, suggesting that the Commission's provisional findings were erroneous or submitting evidence other than generally accessible newspaper and magazine reports. Nevertheless, and also in the context of recitals 33 to 36 below, the Commission considered it appropriate to carry out additional investigations at the premises of :

— Olympia-Werke AG, Wilhelmshaven (Federal Republic of Germany),

— Triumph-Adler Aktiengesellschaft für Büro- und Informationstechnik, Nünberg (Federal Republic of Germany),

— Office and Electronic Machines plc, London (United Kingdom),

— Olivetti Belgium SA, Brussels (Belgium),

— British Olivetti Ltd, London (United Kingdom),

— Olivetti France SA, Paris (France),

— Olympia Business Machines Co. Ltd, London (United Kingdom),

— Triumph-Adler SA, Paris (France).

During these additional investigations the profitability of Community produced electronic typewriters was established for each Community producer on a consolidated Community basis to take account, where appropriate, of the situation of Community producers' subsidiaries situated in the Community. It was established that if the profitability of the total Community industry in 1982, i.e. the year when large-scale imports of Japanese typewriters were starting, was 100 (index) the profitability (expressed as a percentage of turnover before tax) has declined to 36,6 (index) during the reference period.

A provisional determination for the two producers who have consistently made prodits since 1982 was made in Regulation (EEC) No 3643/84. A profitability analysis on the basis of the consolidated returns on sales in the Community since has shown that for both firms the reduction in the average return on sales was 50 and 45 % respectively and, furthermore, that the return was at a reasonably high level in 1982 and normal for this kind of growth industry. The result as finally established shows, therefore, for these firms a sharp decline but, contrary to the provisional finding, from a normal level.

Even allowing for seasonal distortions the quarterly consolidated profitability of sales in the Community during the period of investigation has been regularly below a level at which the existence of this industry could be guaranteed.

(32) No fresh evidence regarding the other injury factors referred to in recitals 30 to 33 of Regulation (EEC) No 3643/84 has been submitted. These conclusions are therefore confirmed.

(33) It was not considered necessary to undertake a detailed examination of price undercutting by Japanese imports since the prices realized by the Community producers had been depressed by the prices of the Japanese products. In view of this the sales price of imported Japanese typewriters was in each case set against a target sales price of the Community product ; this target sales price consisted of each Community producer's cost of production per model, including selling, administrative and other general expenses, and a reasonable margin of profit. The target price was calculated for each company and for each Member State, on the basis of its costs there.

(34) In this context it was found that, unlike many other products, an immediate comparison between imported and Community produced models was impossible because of their variety and their differing technical specifications. When it came to evaluating the technical differences between the most similar models, it became apparent that any evaluation would, to a substantial extent, be influenced by subjective appreciations of the anticipated reactions of prospective purchasers. Furthermore the exporters and the

Community industry expressed the view that no objective yardstick for a comprehensive comparison was available. In view of this, the Commission did not consider it appropriate to appoint an expert.

Given that the exporters and the Community industry have each made bona fide evaluations of the percentage differences in the value of the various models, it was concluded that the most reasonable solution was generally to use a figure at the mid-point between these evaluations.

(35) As to the level of the reasonable profit margin to be included in the target price, the Community industry maintained that a level of between 18 and 20 % on turnover (before tax) and around 30 % on capital was required to operate an industry of this kind successfully.

However, and despite the fact that the Community industry produces the product in countries with different commercial conditions, it was considered appropriate to establish a single profit margin and, when doing so, to take into account past and present performance of the industry as a whole.

The final decision took into account the short product life cycle of electronic typewriters, the existence of financial risks when embarking on new research and development programmes, the need to carry out a number of such programmes in order to keep pace with new developments, a continuing level of investment to finance yet more production automation, the cost of financing at normal market rates in the Community and the need of the Community producers to be able to spend an amount on advertising similar to that of the Japanese exporters.

In view of the foregoing, a profit margin of 10 % on sales was considered adequate.

(36) For each exporter and for each model for which there was a comparable Community produced model, a comparison was made between the target price and the price at which the imported model was sold on the Community market.

As a first step the net sales price of each imported model was adjusted to take into account the percentage difference in value referred to in recital 34 above.

As a second step the adjusted price of each imported model was then compared with a target price of the Community produced model (assuming for the sake of simplicity that there is only one); the same comparison was made individually for each model produced by each exporter. The individual results were then aggregated and weighted between the models concerned on the basis of the volume of sales of each imported model concerned on the national market in question in the Community. This gave an overall index of the price difference between one importer's total sales on that particular market and the target price (for all models) of the Community producer in question in that national market.

This calculation was made for the national markets in the Community in which each Japanese exporter sold the largest quantities of all models. This calculation based on at least two-thirds of each exporter's sales in the Community was considered appropriate to give a representative result for the Community as a whole.

As a final step the individual results for each national market considered were than aggregated and weighted on the basis of the importer's respective sales in each national market to reach a total Community result.

This result, for each exporter, was an aggregate figure corresponding to the difference between its overall export prices and the relevant target prices for the whole Community. This figure was then expressed as a percentage of the imported cif value.

Where a given imported model was comparable to more than one Community model the difference between the target prices for each Community model and the net sales price of the imported model (adjusted as mentioned in recital 34) was established in each instance. The individual results were aggregated and weighted on the basis of the importance of the Community producer's sales of the models in question on the relevant markets resulting in one index only of the difference between the price of the imported model and all the Community models with which the imported model was comparable.

The weighting between the different imported models and the weighting between different Community markets was then done as described above.

The total result for each exporter of the difference between sales prices of imported models and target prices is, in percentage of cif :

— Brother Industries Ltd	21 %
— Canon Inc.	35 %
— Sharp Corporation	32 %
— Silver Seiko Ltd	21 %
— TEC Tokyo Electric Co. Ltd	21 %
— Tokyo Juki Industrial Co. Ltd	17 %
— Towa Sankiden Corporation	20 %

(37) Apart from the actual injury caused during the period under investigation, the final production figures of alpha-numeric electronic typewriters in Japan for 1984 appear to be not 2,5 million units as estimated, for the provisional duty, but in excess of 4 million units, thus rendering the threat of injury in addition to the actual injury already incurred even more acute, since it is very probable that a large proportion of Japanese machines will be exported to the European Community.

(38) It is considered, therefore, that the facts as finally determined show that the injury being caused by dumped imports of electronic typewriters originating in Japan, taken in isolation from that caused by other factors, has to be considered as material. No other factors, such as volume and prices of other imports which were not dumped, or contraction in demand, were found to have been contributory to the injury established.

H. Community interest

(39) After the imposition of the provisional duty, it was considered whether it was in the Community interest to give protection to the Community electronic typewriter industry against dumping practices by the Japanese exporters.

In this context, it has been argued, in particular, that the future of the overall business equipment and office automation industry depends not so much on the viability of the electronic typewriter industry but rather on the viability of the office computer industry.

This argument is not convincing. Whether the electronic typewriter or the computer will, in the future, be the key element of business equipment and office automation, it is not for the Community authorities to prejudice the autcome of this evolution by sacrificing the Community electronic typewriter producers.

(40) It was also submitted that it would not be in the Community interest if, as a result of anti-dumping measures, the prices of Japanese electronic typewriters were to increase, thereby resulting in higher prices to consumers and less competition on the Community market.

It should be noted that this point was not raised by any consumers but by the Japanese exporters and their related importers.

It is accepted that these measures may result in price increase representing, in the short term, disadvantages for the consumer. However, in view of the extent of the injury caused by dumped imports and the importance of the Community industry injured, it is considered that, in this case, the Community's interest to maintain the stability of the industry in question outweighs the interest of the consumers. Furthermore, in the long term, it is in the consumers' interest to have a viable Community industry which will compete with and offer an alternative to imports. It is also considered that the proposed measures allow for workable competition while at the same time ensuring that it commences from a fair base.

(41) Some exporters claimed that any measures should be assessed in relation to the most efficient Community producer or should not take into account the situation of the least efficent one. The exporters' views about the respective efficiency of the Community industry varied ; the firm qualified as most efficient by one exporter was considered least efficient by another and, in general, no criteria for efficiency were given. It is in fact extremely difficult to measure precisely the efficiency and/or effectiveness of the different producers and to make comparison as between these and with the exporters.

Moreover, the Council is not convinced that Community interest necessarily requires that the specific situation of an allegedly less efficient producer when confronted with unfair trade practices be disregarded ; the Council considers that by setting the injury elimination level by including all three Community producers rather than having regard to the allegedly less efficient one alone, Community interest is appropriately reflected.

(42) In these circumstances, protection of the Community's interest calls for the imposition of a definitive anti-dumping duty on imports of electronic typewriters originating in Japan.

I. Undertaking

(43) Kyushu Matsushita Electric Co. Ltd (Matsushita) offered a new undertaking regarding its future exports to the Community.

After consultation, this undertaking was not accepted by the Commission. The grounds on which this decision was taken were communicated by the Commission to Matsushita.

J. Duty

(44) It was considered whether the level of duty should be below the dumping margins definitively determined, if such lesser duty would be adequate to remove the injury. Since it did not seem justified to impose a duty which would allow for increases in the Community producers' prices above the target prices described in recital 33, it was considered appropriate to limit the rate of the duties to be imposed to those percentages set out at recital 36 which would be sufficient to eliminate the injury caused.

(45) Given the particularities of this case, in particular the variety of models and sub-types which undergo frequent changes, it was considered necessary to fix this duty on an *ad valorem* basis.

(46) No other injury element led to the conclusion that these rates were inappropriate.

(47) Brother maintained that a duty could only be imposed if dumped export sales had been financed by domestic sales. This theory, however, is inconsistent with the Community legislation and the GATT and therefore has to be rejected.

(48) In the course of the investigation it was found that, technically, it is an easy operation to include a calculating mechanism into electronic typewriters which, although it would not alter the essential character of the machines, might lead to arguments whether such machines should fall under subheading ex 84.51 A or subheading ex 84.52 B of the Common Customs Tariff. It is therefore considered appropriate to include within the scope of the duty all electronic typewriters declared as falling under either of the abovementioned subheadings.

(49) Certain exporters claimed that particular small-size electronic typewriters should be excluded from the duty because they fall into a different category from those produced and investigated in the Community.

This is considered valid and, consequently, a list of the models excluded from the duty should be established.

K. Collection of provisional duty

(50) The amounts secured by way of provisional anti-dumping duties should be collected to a maximum of the duty definitively imposed,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of electronic typewriters, whether or not incorporating calculating mechanisms, falling within subheadings ex 84.51 A or ex 84.52 B of the Common Customs Tariff and corresponding to NIMEXE codes 84.51 ex 12, ex 14, ex 19, ex 20 or 84.52 ex 95 originating in Japan.

2. The duty shall not apply to electronic typewriters, whether or not incorporating calculating mechanisms, manufactured by Nakajima All Co. Ltd.

3. The duty shall not apply to the following models manufactured by the following enterprises :

— Brother : EP 20, EP 22, EP 41, EP 44, TC 600,
— Canon : S 50 (Typestar 5), S 50 R (Typestar 5 R), S 60 (Typestar 6),
— Casio : CW 10, CW 20, CW 25,
— Silver Seiko : EXD 10, EXD 15.

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

Manufactured by	*Rate of anti-dumping duty (%)*
— Brother Industries Ltd :	21
— Canon Inc. :	35
— Sharp Corporation :	32
— Selver Seiko Ltd :	21
— TEC Tokyo Electric Co. Ltd :	21
— Tokyo Juki Industrial Co. Ltd :	17
— Towa Sankiden Corporation :	20
— Others :	35

5. For the purpose of this Regulation an electronic typewriter is a machine which is steered by microprocessor(s) and which initiates, implements and/or controls its relevant functions by means of software programs. Its main application is printing of text derived from a keyboard, even if an electronic typewriter can be used for additional functions (e.g. computing, communication and storage).

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

Article 2

The amounts secured by way of a provisional anti-dumping duty under Regulation (EEC) No 3643/84 shall be collected at the rates of duty definitively imposed in the cases of Brother Industries Ltd, Silver Seiko Ltd, Tokyo Juki Industrial Co. Ltd, Towa Sankiden Corporation and 'others', and at the rates of provisional duty in the remaining cases, which are Canon Inc., Sharp Corporation and TEC Electric Co. Ltd.

Article 3

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

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

Done at Luxembourg, 19 June 1985.

For the Council

The President

G. ANDREOTTI