COMMISSION REGULATION (EEC) No 2865/85

of 14 October 1985

imposing a provisional anti-dumping duty on imports of certain electronic scales originating in Japan and accepting undertakings and terminating the proceeding in respect of certain imports of such products 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 10 and 11 thereof,

After consultations within the Advisory Committee set up under the above Regulation,

Whereas :

A. Initiation of proceeding

1. Following a complaint by the European Committee of Weighing Instrument Manufacturers on 3 September 1983, the Commission gave notice of initiation of an anti-dumping proceeding concerning imports of certain electronic scales originating in Japan (2).

B. Provisional action

2. By Regulation (EEC) No 757/84 (3), the Commission imposed a provisional anti-dumping duty on the said imports.

C. Continuation of investigation

3. The Commision officially advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainants of the imposition of the provisional duty and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing. All the known exporters and several of the complainants made known their views in writing. One of the exporters and two of the complainants requested and were granted hearings.

4. One of the exporters requested the extension of the provisional anti-dumping duty for a further two months.

5. Several of the complainants maintained that new circumstances had arisen since the conclusion of the Commission's preliminary investigation which called the findings of this investigation into question. The complainants requested that the investigation be pursued, taking this new evidence into account.

6. The Commission judged the written evidence submitted by the complainants to be sufficient to justify pursuing the proceeding, taking due account of altered circumstances and an updated investigation period, rather than submitting a proposal to the Council for definitive measures.

The Commission accordingly gave notice in the *Official Journal of the European Communities* (4), of the continuation of the anti-dumping proceeding concerning imports of certain electronic scales originating in Japan. The provisional duty imposed in March 1984 therefore expired, with no provision made for retention of the securities deposited.

7. The Commission officially so advised the exporters and importers known to be concerned and the complainants, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing. Some of the known exporters and importers made their views known in writing and requested and were granted hearings.

8. For the purpose of a further determination, the Commission requested and received additional written submissions from most of the known exporters and importers and from the most important of the Community producers which had lodged the complaint.

9. A number of Community producers which had been among those making the original application for initiation of a proceeding did not answer the questionnaire sent them by the Commission for further information on the updated period of investigation. The Commission assumed that these Community producers were no longer interested in the continuation of the proceeding and based

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No C 236, 3. 9. 1983, p. 5.
(3) OJ No L 80, 24. 3. 1984, p. 9.
(4) OJ No C 196, 25. 7. 1984, p. 3.

its further investigations solely on the information supplied by those producers which had requested an investigation and continued to cooperate actively in it. The Commission satisfied itself that these producers still accounted for a major part of Community production of electronic scales.

10. Where it considered it necessary in order to ascertain the facts more fully, the Commission checked the information supplied on the spot. The premises visited were :

— *Community producers :*

— W. and T. Avery Ltd, Smethwick, Warley, United Kingdom,
— Moreau SA, Saint Maur, France,
— Bizerba-Werke GmbH u. Co., Balingen, Germany ;

— *Community importers :*

— TEC Belgium NV/SA, Brussels, Belgium,
— TEC Europe Co. Ltd, London, United Kingdom.

11. The original dumping investigation covered the period September 1982 to August 1983. The updated investigation period was September 1983 to June 1984.

Information supplied by the parties concerned for the original investigation period and re-submitted was also considered by the Commission.

D. Normal value

12. For imports of all scales from Kubota and Ishida and some Yamato and Teraoka models, normal value was provisionally determined on the basis of the prices of domestic sales in Japan. For Kubota the domestic selling prices were adjusted to take account of the fact that the goods had been sold at a loss. Kubota did not supply the additional information requested by the Commission for the period September 1983 to June 1984. The Commission therefore, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2176/84, made preliminary findings for Kubota on the basis of the facts available.

13. For imports of other Yamato and Teraoka models normal value was provisionally determined on the basis of production costs and overheads plus a reasonable margin — reckoned on the basis of the trading performances of the Japanese scales producers between 1981 and 1984 inclusive — of 8 %. The Commission had in these cases to use the constructed value as, for certain of these producers' export models, there were no sales of comparable models on the Japanese domestic market.

14. In the case of the Tokyo Electric Co., the Commission had determined the normal value of all scales exported to the Community on the basis of a constructed value when making the findings which led to the imposition of a provisional anti-dumping duty in March 1984. This was partly because no comparable scales were sold by Tokyo Electric Co. on the Japanese domestic market and sales of comparable scales to an associated sales company were not considered as taking place in the ordinary course of trade. The Commission computed the constructed value by aggregating the cost of the materials, production costs, and marketing and administrative expenses within the group only, plus a reasonable profit margin.

15. On further investigation of the case, however, the Commission arrived at the conclusion that, within the framework of the Tokyo Electric Co.'s organization, both manufacturing firm and sales company formed parts of the one corporate structure, the sales company fulfilling functions substantially similar to those of a sales branch or sales department. The fact that the sales company in law constitutes an independent undertaking does not alter the fact that one is dealing here with a single economic entity. What is of relevance in this case is not the legal structure but the fact that the main function of the sales company is to sell, or promote the sale of, the corporate product and that it is controlled by the corporate parent company whether because of majority share ownership or otherwise.

In the case of the Tokyo Electric Co. its sales company is controlled by the corporate parent company and its exclusive function is to sell the corporate products on the domestic market. The sales company is therefore to be seen as part of its corporate structure and only selling prices charged by this company to clients independent of it can be regarded as occurring in the ordinary course of trade and therefore be taken to reflect the product's true normal value.

16. In the continued proceedings the Commission accordingly computed the normal value for a comparable scales model on the basis of the selling prices charged by the Tokyo Electric Co.'s sales company to independent dealers. The sales on the domestic Japanese market of this model represent approximately 50 % of the quantities of the comparable model exported to the Community.

In addition, where there were no sales on the domestic market of models comparable to those exported to the Community, a constructed value had to be determined. The Commission computed the production costs on the basis of the costs of the materials and the manufacturing costs, plus all the marketing and administrative expenses arising between production and sale to independent dealers, i.e. including the marketing and administrative costs of the sales company, forming part of the same economic unit as explained in recital 15 above.

17. In computing the amount of the selling, administrative and general expenses to be added, the Commission rejected certain divisions of expenses, which were put forward by the Tokyo Electric Co. on the grounds that there was a direct connection between these general expenses and certain sales, the Commission holding that sufficient proof of such a connection had not been produced. The relevant expenses were accordingly divided up according to revenue for each product.

18. The Tokyo Electric Co. disputed the Commission's findings with regard to the selling and administrative expenses to be included in the computation of the normal value. It argued in particular that sales were made through a legally independent sales company, the selling and general administrative expenses of which should have no bearing on the constructed value.

19. The Commission considers that this argument is 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 such as could be established 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 of electronic scales are conducted by the Tokyo Electric Co. in the ordinary course of trade exclusively through a wholly-owned sales company and since this has to be considered as a sales branch of the exporter's corporate structure, the selling, administrative and general expenses incurred by the relevant sales company of the Tokyo Electric Co. are the determining cost factors to be taken into consideration for the determination of the individual exporter's constructed normal value.

E. Export price

20. 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.

In all other cases, where exports were made to subsidiary companies in the Community, the 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 duties — and a profit margin of 8 %. This profit margin was considered reasonable by analogy with the profit margins of independent importers of the products in question.

21. In determining the expenses to be deducted, the Commission, in so far as adequate evidence was submitted by the importers concerned, took into consideration the expenses directly attributable to sales of scales. In all other cases, expenses were divided up according to the proportion of total revenue the relevant scales accounted for.

22. The Tokyo Electric Co. claimed that occasional coordination operations and services had been carried out by its subsidiary in the United Kingdom for other European subsidiaries and that the costs involved should not be taken into account in connection with sales of scales in the United Kingdom.

In addition, documentary evidence was submitted relating to certain vehicle costs and commissions, which, it is claimed by Tokyo Electric Co., should not be deducted.

Since it could not adequately verify this evidence, the Commission did not for the time being accept these claims when computing the export price.

F. Comparison

23. 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 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, salaries and travelling expenses paid to salesmen, commissions, packing and transport. All comparisons were made at ex-works level.

No allowance was granted for claims concerning differences 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) and (10) of Regulation (EEC) No 2176/84 ; specifically physical characteristics, quantities, conditions and terms of sales, time, and level of trade. The only heading under which overheads and general expenses could be checked 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. In accordance with Community legislation, this is not the case, generally, for differences in overheads and general expenses.

24. The Tokyo Electric Co. claimed that allowance should be made for all expenses — i.e. including overheads and general expenses — incurred by the domestic sales company on the grounds that all this company's expenses result from its marketing activities on the domestic market, it being 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 subsidiary deriving from the overall control exercised by the former, which has already been referred to under recitals 15 and 19 above. Therefore the argument advanced by the Tokyo Electric Co. — whereby the relationship of overheads to sales differs according to whether the sales are made by the manufacturing or the sales company — is not well founded.

Moreover, under Regulation (EEC) No 2176/84 allowances can only be granted for differences in the factors mentioned in Article 2 (9) and further defined in Article 2 (10). One factor that could be relevant for Tokyo Electric Co.'s claim 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. It must be shown that these costs bear a direct relationship to the sales under consideration. The Commission considers that this relationship must be functional, i.e. that these costs are incurred because a particular sale is made, and are strictly necessary to fulfil the terms of the sale under consideration.

25. Since general expenses, by definition, do not have such a direct functional relationship to specific sales transactions, they are as a rule not allowable.

There is no reason to deviate from this rule merely because of formal legal structures such as the delegation of certain functions to one or more companies, the corporate structure of the group under company law or the handling of sales by an integrated company department or independent subsidiary.

26. The Tokyo Electric Co. further claimed that allowance should be made for the entire costs of the sales company in Japan to take account of an alleged difference in the level of trade. As the Commission, on the basis of the documentary evidence submitted to it, had concluded that both domestic and foreign sales involved the same trade level, i.e. involved similar categories of purchasers, no adjustment could be granted.

27. The Tokyo Electric Co. 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 free-at-Community-frontier which is not influenced by the relationship between the exporting company and its associated importers or by costs incurred within the Community. As to the comparison between normal value and export price, other rules apply which have led to price adjustments for all allowable factors for which sufficient evidence has been produced, as explained under recital 23 above.

28. The Tokyo Electric Co. applied alternatively for additional adjustments for after-sales services, sales promotion, part exchanges, postal and telephone charges, provisions for bad debts and certain company taxes. As a direct connection between these expenses and the relevant sales on the Japanese domestic market was not adequately proved, the Commission considered these expenses for the time being to be general expenses for which, as a rule, no discount is made.

29. The Tokyo Electric Co. also applied for differences in production costs to be taken into account in respect of those models whose normal value was determined on the basis of their sales on the Japanese domestic market. These differences arose allegedly from the need in the context of the Japanese market for additional technical attention to guarantee the scales' accuracy at different altitudes. Since the documentary evidence made available to the Commission did not permit such technical differences and resultant additional costs to be established with certainty, the Commission did not for the time being make any provision for such differences.

30. When export prices varied the normal value was compared with the export price of each export transaction. Where export prices were sufficiently uniform, such that the overall result of the calculations made was not influenced, the Commission computed the weighted average of the export prices and compared it with the normal value.

G. Dumping margins

31. The preliminary examination of the facts revealed the existence of dumping in the case of all the exporters in question, the margins of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community. The size of these margins varies according to exporter, importing Member State, type of electronic scales and investigation period. The weighted average margins for the individual exporters investigated were as follows:

	First investigation period (September 1982 to August 1983)	Second investigation period (September 1983 to June 1984)
Tokyo Electric Co.	12,0 %	26,8 %
Teraoka	2,4 %	2,2 %
Ishida	2,3 %	1,5 %
Yamato	2,9 %	1,0 %
Kubota	6,8 %	no specific data available

The dumping margins varied considerably according to the importing Member State. In particular, the weighted average margins for Tokyo Electric Co. varied in the second investigation period between 42,2 % in the United Kingdom, 20,5 % in the Netherlands, 12,2 % in Belgium and only 3,6 % in Greece. In the same period the dumping margins of the other exporters concerned were between 0 % in Greece and 5,8 % in the Netherlands. The Commission nevertheless considered that the weighted average for the whole Community should be applied as any other alternative solution would either have been excessive or have given rise to considerable administrative complications.

H. Injury

32. With regard to injury caused by the dumped imports of electronic scales from Japan, the evidence available to the Commission shows that such imports rose from 4 167 units in 1980 to 8 315 units in 1982, 11 605 in 1983 and 10 222 in the first half of 1984. Extrapolating this last figure to the whole year 1984, imports quintupled between 1980 and 1984. The market share taken by the imports into the Community as a whole rose from 6,0 % in 1980 to 22 % in the first half of 1984. The injury is greater in those Member States where the market is fully open to the Japanese product, by virtue of the national weights and measures legislation and its application. Thus the market share taken by electronic scales originating in Japan in the first half of 1984 was around 85 % in Greece, 77 % in the

Netherlands, 58 % in Belgium and 30 % in the United Kingdom. These four Member States together absorbed about 85 % of the imports of electronic weighing scales originating in Japan. The increase in the market share of Japanese electronic scales in the Community is mainly attributable to the dumped exports of Tokyo Electric Co. The evolution of export volumes investigated reveals that Tokyo Electric Co. substantially increased its exports of electronic scales from the first to the second investigation period, in particular to the United Kingdom, the Netherlands and Belgium, while by contrast total exports of all other Japanese exporters to these three Member States declined in the same period. This development of export volumes to the three Member States most affected by the dumped exports reflects the impact of the increase and of the ultimate extent of the dumping margins found for Tokyo Electric Co. : not only were market shares of Community manufacturers in these Member States reduced, but also the market shares of those Japanese exporters whose dumping margins are less significant.

33. The Commission established that the output of the most important of the Community manufacturers whose complaint resulted in initiation of the proceeding grew between 1981 and 1984. It should be noted, however, that the market for the product in question — a technologically new product — is expanding rapidly world-wide. In addition, the Commission's investigations showed that the Community manufacturers were able to increase their production mainly because their sales on those Community markets which suffered little or no disturbance as a result of the dumping of exports from Japan rose in step with the expansion of the market. In those Member States where the Japanese exports were concentrated, on the other hand, namely the United Kingdom, Belgium, the Netherlands and Greece, the Community manufacturers' sales scarcely rose above the low level of 1981. The result was that on these markets the Community maynufacturers' share declined substantially, from 48 % in 1981 to 32 % in 1984.

34. The Commission examined to what extent the prices at which the dumped imports are sold in the Community are causing injury to the Community manufacturers. It found that technical progress and substantial productivity gains in recent years have tended to lower the prices of electronic scales, so that the distinct fall in prices in the Community cannot be attributed wholly to the dumped imports. Investigations at the premises of selected Community manufacturers further revealed that their selling prices, at comparable levels of trade, in competition with the dumped Japanese scales were of necessity at a similar level.

The Community manufacturers are compelled either to adjust their prices, giving up profit in the process or even accepting losses, or to withdraw from competition.

The results of this situation are that the Community manufacturers' prices for the types of scales most competitive with the Japanese imports in certain cases fall a considerable way below the production costs of even the Community producers with the lowest costs. The firms' results, considered generally, show that in spite of substantial investment — a constant necessity in the sector concerned, in order to keep up with technical progress — and considerably improved productivity, substantial losses have piled up in the last four years, notwithstanding the fact that losses sustained in competition with Japanese imports have been partly compensated by better results on the Community markets which are not quite so open. Because of the growing pressure from the dumped Japanese imports on the markets where the Community manufacturers concerned sold approximately 50 % of their output, these manufacturers have not been obtaining a sufficient return on the resources committed and their survival in this technologically advanced sector is in grave doubt.

35. The Commission considered whether injury had been caused by other factors such as the volume and prices of other imports or the trend of demand. Imports into the Community from all origins other than Japan fell from 4 581 to 2 450 units between 1980 and 1984. Consumption in the Community increased substantially during the same period.

36. Therefore the sharp increase in the dumped imports and the prices at which they are offered for resale in the Community led the Commission to find that the effects of the dumped imports of

certain electronic scales originating in Japan must be regarded as a cause of material injury to the Community industry concerned.

I. Community interest

37. After having considered both the interests of the Community and the dumping and the injury provisionally established, the Commission has come to the conclusion that action should be taken. In order to prevent further injury being caused during the remainder of the proceeding, this action should, as far as necessary, take the form of a provisional anti-dumping duty. The action should also cover the four other exporters. Although their dumping margins were considerably lower than that of Tokyo Electric Co., they vary considerably from one Member State to another and therefore cannt be considered as *de minimis.*

J. Duty

38. Given the prices at which electronic scales originating in Japan are sold in the Community and the return needed to cover production costs of comparable models produced by the Community industry, the duty should be set at a level corresponding to the weighted average dumping margin, as provisionally established for the second period of investigation.

The Commission considers that the results of the updated period of investigation from September 1983 to June 1984 are decisive, since during this period new models were brought on to the Community market by Japanese exporters and an average taken over the two periods of investigation would not reflect correctly the facts of the more recent situation.

Taking account of the price differences between the various models of scales under investigation the duty should be imposed in the form of a percentage rate *ad valorem.*

39. A period should be fixed within which the parties concerned may make their views known in writing and request an oral hearing.

K. Undertakings

40. The Japanese exporters concerned were notified of the main points of the findings and reacted accordingly. Subsequently, undertakings were offered by Yamato Scale Co. Ltd, Teraoko Seikosno Co. Ltd, Kubota Ltd and Tokyo Electric Co. The Commission examined these undertakings in the light of the provisionally established dumping margins and the injury caused. It concluded that in view of the relatively small dumping margins involved and the lower level of their exports to the Community, the undertakings offered by Yamato, Teraoka and Kubota were sufficient to eliminate the injury caused.

41. Accordingly, the undertakings offered by Yamato, Teraoka and Kubota were considered acceptable. Consequently, the proceeding can be terminated in respect of these firms without an anti-dumping duty being imposed.

42. Given the dumping margin established in respect of the Tokyo Electric Co., which increased substantially in the second period of investigation, and the accompanying sharp increases in exports to the Community as mentioned in paragraph 32, and in market share in the Member States mainly concerned, the Commission considers that the price increase contained in the undertaking offered by the Tokyo Electric Co. is not sufficient to remove the injury. The undertaking offered by the Tokyo Electric Co. should therefore be rejected and a provisional anti-dumping duty imposed.

No objection to this course was raised in the Advisory Committee,

HAS ADOPTED THIS REGULATION :

Article 1

1. The undertakings offered by Yamato Scale Co. Ltd, Teraoko Seikosno Co. Ltd and Kubota Ltd in connection with the proceeding concerning imports of certain electronic scales originating in Japan are hereby accepted.

2. The investigation, in so far as it concerns Yamato Scale Co. Ltd, Teraoka Seikosno Co. Ltd and Kubota Ltd, is hereby terminated.

Article 2

1. A provisional anti-dumping duty is hereby imposed on imports of electronic scales for use in the retail trade which incorporate a digital display of the weight, unit price and price to be paid (whether or not including a means of printing these data) falling within heading No ex 84.20 of the Common Customs Tariff, corresponding to NIMEXE code ex 84.20-81, and originating in Japan, with the exception of those produced by Yamato Scale Co. Ltd, Teraoka Seikosno Co. Ltd, and Kubota Ltd.

2. The rate of the anti-dumping duty shall be 26,8 % of the net free-at-Community-frontier price before duty.

For imports of electronic scales produced by Ishida Scales Manufacturing Co. Ltd the rate of duty shall be 1,5 % of the net free-at-Community-frontier price before duty.

The free-at-Community-frontier prices shall be net if the conditions of sale provide for payment within 30 days from the date of shipment; they shall be increased or reduced by 1 % for each increase or decrease of one month in the period for payment.

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

4. 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 3

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

Article 4

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, 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, 14 October 1985.

For the Commission

Willy DE CLERCQ

Member of the Commission