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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1021/88

of 18 April 1988

extending the anti-dumping duty imposed by (EEC) No 1058/86 to certain electronic scales assembled in the Community

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), as amended by Regulation (EEC) No 1761/87 (2), and in particular Article 13 (10) thereof,

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

Whereas :

A. Procedure

(1) In July 1987, the Commission received a complaint lodged by W & T Avery Ltd, Esselte Moreau SA and Bizerba-Werke Wilhelm Kraut GmbH & Co. KG, representing the majority Community production of electronic scales. The complaint contained sufficient evidence of the fact that following the opening of the investigation on electronic scales originating in Japan (3), which led to the adoption of Regulation (EEC) No 1058/86 (4) imposing a definitive anti-dumping duty on imports of those products, two companies were assembling electronic scales in the Community under the conditions referred to in Article 13 (10) of Regulation (EEC) No 2176/84. After consultation, the Commission accordingly announced, by notice published in the *Official Journal of the European Communities* (5), the initiation of an investigation, under the said Article 13 (10), concerning electronic scales assembled in the Community by the following companies :

— TEC (UK) Ltd, Preston, United Kingdom,

— TEC-Keylard Weegschalen Nederland BV.

(2) The Commission so advised the companies concerned, the representatives of Japan and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(3) The two companies concerned as well as the complainants made their views known in writing. TEC (UK) and the complainants requested and were granted hearings by the Commission.

(4) No submissions were made by purchasers of electronic scales assembled in the Community. The Commission sought and verified all information it deemed necessary for the purpose of the assessment of the character of the alleged assembly operations and carried out investigations at the premises of the following companies :

— TEC (UK) Ltd, Preston, United Kingdom,

— TEC-Keylard Weegschalen Nederland BV.

(5) The period of investigation was from 1 January to 31 July 1987.

B. Relationship or association with exporter

(6) It was found that TEC (UK) was a subsidiary of TEC (Japan) and that TEC-Keylard had substantial capital links and close economic and commercial relations with TEC (Japan).

c. Production

(7) The two companies started their assembly operations after the initiation of the anti-dumping proceeding concerning the imports of electronic scales originating in Japan on 3 September 1983.

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No L 167, 26. 6. 1987, p. 9.
(3) OJ No C 236, 3. 9. 1983, p. 5.
(4) OJ No L 97, 12. 4. 1986, p. 1.
(5) OJ No C 235, 1. 9. 1987, p. 3.

D. Parts

(8) The value of parts and the ratio between Japanese parts and parts of other origin were determined on the basis of the companies' purchase prices of these parts when delivered to the factories in the Community, that is on an into-factory, duty-paid basis.

TEC-Keylard

(9) TEC-Keylard claimed that some sub-assembled items of significant value used for some models were of Community origin. It was found that these items were assembled in the Community by an independent Community producer, from parts imported from Japan, from parts purchased in the Community, and from parts manufactured by this Community producer itself. On the basis of information received from two sources, one being the complainants carrying out virtually identical assembly operations themselves and the other being the company referred to above, it was concluded that this sub-assembly did constitute a substantial process or operation as required by Article 5 of Regulation (EEC) No 802/68 (1). The assembly operation and the manufacture of the components carried out in the Community was of a substantial nature. The item was thus of Community origin.

(10) The weighted average value of Japanese parts for all models produced by TEC-Keylard was found to be less than 60 %. The investigation is, therefore, terminated by a Commission Decision.

TEC (UK)

(11) Only one model was produced during the investigation period. It was found that the value of Japanese parts used by TEC (UK) was 92,38 % of the total parts value.

E. Other circumstances

(12) Consideration was given to other relevant circumstances with regard to the assembly operations referred to above, in accordance with Article 13 (10) (a) of Regulation (EEC) No 2176/84.

(13) It was found that no genuine attempts had been made by TEC (UK) to change the sourcing pattern.

(14) As to direct labour, it was found that a very limited number of new jobs had been created by the assembly operations of TEC (UK). Furthermore, this company only carries out simple assembly operations of a very basic nature, whereas the Community producers normally have an integrated, in-depth production which requires more personnel. Since the increased sales of assembled electronic scales result in decreased sales by the Community producers, it can only be concluded that the functioning of the assembly operation of that company has resulted in a net loss of employment in the Community.

(15) Furthermore, as regards research and development, it was found that none was carried out in the Community. In this context, TEC UK) claimed that the fact that its technical manager visited TEC Japan's factory for two months in order to receive training as well as its decision to set up an R & D centre for the development of software application should be duly taken into consideration. This claim has to be rejected since these activities, one of which has yet to become operational, do not constitute research and development carried out in the Community for the products under consideration.

F. Conclusions

(16) In view of the foregoing, it is concluded that the anti-dumping duty imposed by Regulation (EEC) No 1058/86 should be extended to certain electronic scales assembled in the Community.

The amount of the duty to be collected, which takes the form of a flat-rate duty for the company concerned, was calculated in a manner to ensure that it corresponds to the percentage rate of the anti-dumping duty applicable to the exporters in question, on the cif value of the parts or materials from Japan as established for the investigation period.

G. Undertakings

(17) TEC (UK), against which protective measures are considered necessary, having been informed of the essential facts and considerations on the basis of which the present measures are being proposed, offered an undertaking referring, in particular, to the attainment of a certain proportion of parts originating in the Community. The Commission does not consider this undertaking to be acceptable at present for reasons that have been given separately to the interested company. The Commission is invited, however, to re-examine the acceptability of the undertaking and to proceed to the necessary verification as soon as it has been

(1) OJ No L 148, 28. 6. 1968, p. 1.

informed by the company concerned that the conditions justifying the present extension of the anti-dumping duty to assembled products have been removed. Satisfactory guarantees should also be given that these conditions would not recur in the future,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Regulation (EEC) No 1058/86 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) corresponding to CN code ex 8423 81 50, originating in Japan, is hereby also imposed on electronic scales introduced into the commerce of the Community after having been assembled in the Community by TEC (UK) Ltd, Preston, United Kingdom.

2. The duty shall be 65,63 ECU per unit assembled by the company concerned.

Article 2

1. Parts and materials suitable for use in the assembly or production of electronic scales by the company referred to in Article 1 (1) and originating in Japan can only be considered to be in free circulation in so far as they will not be used in the assembly or production operations referred to above.

2. Electronic scales thus assembled or produced shall be declared to the competent authorities before leaving the assembly or production plant for their introduction into the commerce of the Community. For the purpose of levying any anti-dumping duty, this declaration shall be considered to be equivalent to the declaraton referred to in Article 2 of Directive 79/695/EEC [1]

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

Article 3

This Regulation shall enter into force on the day of 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, 18 April 1988.

For the Council

The President

G. STOLTENBERG

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[1] OJ No L 205, 13. 8. 1979, p. 19.