COUNCIL REGULATION (EEC) No 1022/88

of 18 April 1988

extending the anti-dumping duty imposed by Regulation (EEC) No 1698/85 to certain electronic typewriters 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 CETMA, the Committee of European Typewriter Manufacturers, on behalf of French, German and Italian producers of electronic typewriters whose collective output constitutes practically all Community production of the product in question. The complaint contained sufficient evidence of the fact that following the opening of the investigation on electronic typewriters originating in Japan (3), which led to the adoption of Regulation (EEC) No 1698/85 (4) imposing a definitive anti-dumping duty on imports of those products, a number of companies were assembling electronic typewriters 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 typewriters assembled in the Community by the following companies :

— Silver Reed International (Europe) Ltd, Watford, United Kingdom,

— Brother Industries (UK) Ltd, Wrexham, United Kingdom,

— Kyushu Matsushita (UK) Ltd, Newport, United Kingdom,

— Sharp Manufacturing Company of UK, Wrexham, United Kingdom,

— Canon Bretagne SA, Liffré, France,

— TEC Elektronik-Werk GmbH, Braunschweig, Germany.

(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) All the companies concerned as well as the complainants made their views known in writing, requested and were granted hearings by the Commission.

(4) No submissions were made by purchasers of electronic typewriters 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 :

— Astec Europe Ltd, Stourbridge, United Kingdom,

— Brother Industries (UK) Ltd, Wrexham, United Kingdom,

— Canon Bretagne SA, Liffré, France,

— Kyushu Matsushita (UK) Ltd, Newport, United Kingdom,

— Sharp Manufacturing Company of UK Ltd, Wrexham, United Kingdom.

Furthermore, the Commission carried out an investigation at the premises of a supplier of sub-assemblies to some of the companies involved. Because it is not directly involved in this investigation, this company requested that its name be withheld. Given the circumstances, this request appears to be justified.

One other company, whose activities in the Community were to be investigated according to the opening notice, namely TEC Elektronik-Werk GmbH, Braunschweig, Germany, ceased assembling electronic typewriters in the Community before the beginning of the investigation. The investigation concerning this company was, therefore, terminated by a Commission decision.

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

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No L 167, 26. 6. 1987, p. 9.
(3) OJ No C 83, 24. 3. 1984, p. 4.
(4) OJ No L 163, 22. 6. 1985, p. 1.
(5) OJ No C 235, 1. 9. 1987, p. 2.

B. **Relationship or association with exporter**

(6) All companies referred to under point 1 were found to be wholly-owned subsidiaries of Japanese exporters of electronic typewriters which are subject to the definitive anti-dumping duty imposed by Regulation (EEC) No 1698/85.

(7) One company, namely Silver Reed International (Europe) Ltd, claimed that it should not be included in this investigation because the assembly operation was not carried out by Silver Reed but by Astec Europe Ltd. However, the investigation revealed that Astec's activities in this context were limited to the mere assembly of all parts of electronic typewriters which were imported and delivered to it at its premises by Silver Reed. These assembled electronic typewriters were then exclusively sold on the Community market by the Silver Reed Group. This group bore all costs between importation of the parts and the sale of the finished products. An assembly fee was paid to Astec by the Silver Reed Group but this fee constituted only a small percentage of Silver Reed's total costs of sale. In these circumstances, this assembly operation should be considered as having been carried out by Silver Reed.

C. **Production**

(8) All companies started their assembly operations after the initiation of the anti-dumping proceeding concerning imports of electronic typewriters originating in Japan on 24 March 1984.

D. **Parts**

(9) The value of parts in question was generally determined on the basis of the companies' purchase prices of these parts when delivered to the factories in the Community. Some companies requested fob or cif values be used. This request had to be rejected since the relevant value is that of the parts and materials as they are used in the assembly operations, that is on an into-factory, duty-paid basis.

(10) The companies' purchase prices were not used in those cases referred to in detail below where the investigation has shown that they did not adequately reflect their true value. In these cases, the purchase prices were replaced by appropriate alternative prices.

Canon

(11) The investigation revealed that, for some models, the transfer price of certain parts and materials originating in Japan and supplied by Canon Incorporated (Japan) to its subsidiary in the Community did not cover all the costs incurred by Canon Incorporated. The sales prices were, therefore, adjusted in order to ensure that they reflected Canon Incorporated's purchase price of those parts manufactured by third parties or the totality of Canon Incorporated's own production costs plus the sales, general and administrative expenses incurred by Canon Incorporated and shown in its public accounts.

Canon claimed that one sub-assembled item which was the most costly individual one used for some models was of Community origin. It was found, however, that this item was assembled in the Community, entirely from parts imported from Japan, by a subsidiary company of a Japanese producer which normally manufactures these products in Japan and supplies Canon's mother company there. On the basis of information received from two sources, one being an electronic typewriter producer carrying out a virtually identical assembly operation itself and the other being the company referred to above, it was concluded that this sub-assembly did not constitute a substantial process or operation as required by Article 5 of Regulation (EEC) No 802/68 [1]. The simple assembly operation carried out in the Community was of a basic and unsubstantial nature compared with the manufacture of the components which was performed in Japan. The item was thus not of Community origin.

Canon requested that the assembly costs of one sub-assembly, incurred in its own factory, should be included in the value of Community parts. This request, however, cannot be granted because the cost of assembly cannot be included in the value of parts or materials used in the assembly or production operations, but constitutes a value added to these parts or materials in the assembly process.

It was found that the value of Japanese parts used by Canon varied according to model from 70 % to 95 % of the total parts value, the weighted average value of Japanese parts for all models assembled during the investigation period being 80 %.

Brother

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

Kyushu Matsushita

(13) The investigation revealed, for almost all models, a situation identical to the one described under the second paragraph of point 11. The same conclusion was drawn.

[1] OJ No L 148, 28. 6. 1968, p. 1.

It was found that the value of Japanese parts used by Kyushu Matsushita varied according to model from 77 % to 94 % of the total parts value, the weighted average value of Japanese parts for all models assembled during the investigation period being 82 %.

Sharp

(14) The investigation revealed that the transfer price of certain parts and materials originating in Japan and supplied by Sharp Corporation (Japan) to its subsidiary in the Community did not cover all the costs incurred by Sharp Corporation. The same observations as in the first paragraph of point 11, can be made and the same conclusion drawn in the case of Sharp.

Sharp claimed that one sub-assembled item used for most models, which was the most costly individual one, was of Community origin. It was found, however, that Sharp Corporation (Japan) sold all individual items to an unrelated Community company which carried out the sub-assembly and subsequently sold the product to Sharp.

Sharp claimed that the entire sales price should be included in the computation as Community value. On the basis of information provided by a company carrying out a complete production cycle of the product concerned and on the basis of generally known facts regarding this product, it was concluded that this sub-assembly did not constitute a substantial process or operation as required by Article 5 of Regulation (EEC) No 802/68. The simple assembly operation carried out in the Community was of a basic and unsubstantial nature compared with the manufacture of the components which was performed in Japan. This item was thus not of Community origin.

It was found that the value of Japanese parts used by Sharp varied according to model from 72 % to 97 % of the total parts value, the weighted average value of Japanese parts for all models assembled during the investigation period being 75,7 %.

Silver Reed

(15) It was found that the value of Japanese parts used by Silver Reed varied according to model from 95 % to 97 %, the weighted average value of Japanese parts for all models assembled during the investigation period being 96 %.

E. Other circumstances

(16) 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.

(17) In most cases, Brother being an exception, it was found that, the nature of the parts sourced in the Community was relatively simple and that they were of low value, limited in one case to packaging materials only. All parts of a higher technological value were imported from Japan and few genuine attempts appear to have been made to substantially change the sourcing pattern.

(18) Some companies claimed that it was impossible to find sources of supply in the Community which guarantee a required level of quality. This was found to be an incorrect statement. Community producers of electronic typewriters, of comparable quality to those of the companies concerned, source their parts in the Community and Brother has proved that it is not indispensable to use predominantly parts of Japanese origin.

(19) Furthermore, it was claimed that it was extremely difficult to have a high level of sourcing of parts outside Japan during the earlier stages of the production of new models. The example of Brother, which has always had a high level of Community sourcing, has shown that this claim is incorrect.

(20) As to direct labour, it was found that a certain number of new jobs had been created by the companies concerned, in particular by Brother. However, the companies investigated only carry out assembly operations whereas the Community producers normally have an integrated, in-depth production which requires more personnel. Since the increased sales of assembled electronic typewriters result in decreased sales by the Community producers, it can only be concluded that the functioning of the assembling companies has resulted in a net loss of employment in the Community.

(21) Furthermore, as regards research and development, it was found that none was carried out in the Community. In this context, Sharp claimed that its so-called 'Creative Center Europe' and its 'Engineering Research Office' should be duly taken into consideration. The purpose of the former is to 'improve the design of Sharp products so as to ensure their complete compatibility with European

lifestyles'. The purpose of the latter is to 'survey and collect data on the most advanced engineering techniques and developments' and 'to collate all available information on technological, research and development and engineering processes in Europe, analyse these and inform' the Sharp companies 'of improvements and developments'. It is not evident that these activities relate to electronic typewriters and, in any case, they are not considered to constitute research and development carried out in the Community.

(22) Some companies claimed to have transferred technology to the Community by setting up assembly operations. However, since assembly technology for electronic typewriters has been known in the Community for longer than in Japan, this claim cannot be accepted.

(23) Kyushu Matsushita requested that it be taken into consideration that it had never exported complete electronic typewriters to the Community. However the anti-dumping duty imposed by Regulation (EEC) No 1698/85 applies equally to Kyushu Matsushita and therefore Article 13 (10) of Regulation (EEC) No 2176/84 is applicable to this case.

F. Conclusions

(24) In view of the foregoing, it is concluded that the anti-dumping duty should be extended to certain electronic typewriters assembled in the Community. The amount of the duty to be collected, which takes the form of a flat-rate duty for each company, 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

(25) The companies against which protective measures are considered necessary have been informed of the essential facts and considerations on the basis of which the present measures have been proposed. All these companies, with the exception of Silver Reed, offered undertakings referring, in particular, to the attainment of a certain proportion of parts originating in the Community. The Commission does not consider these undertakings to be acceptable at present for reasons that have been given separately to the interested companies. The Commission is, however, invited to re-examine the acceptability of undertakings and to proceed to the necessary verification as soon as it has been informed by the companies 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 1689/85 on imports of electronic typewriters, whether or not incorporating calculating machanismus, originating in Japan, is hereby also imposed on electronic typewriters, whether or not incorporating calculating mechanisms, corresponding to CN codes 8469 10 00, ex 8469 21 00, ex 8469 29 00 and ex 8470 90 00, introduced into the commerce of the Community after having been assembled in the Community by:

— Canon Bretagne (France),
— Kyushu Matsushita (United Kingdom),
— Sharp (United Kingdom),
— Silver Reed (United Kingdom).

2. The rate of duty shall be as set out below per unit assembled by the companies concerned:

— Canon Bretagne (France)	44,00 ECU,
— Kyushu Matsushita (United Kingdom)	40,94 ECU,
— Sharp (United Kingdom)	21,82 ECU,
— Silver Reed (United Kingdom)	56,14 ECU.

Article 2

1. Parts and materials suitable for use in the assembly or production of electronic typewriters by the companies 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 typewriters 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 an anti-dumping duty, this declaration shall be considered to be equivalent to the declaration 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.*

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

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