COUNCIL REGULATION (EEC) No 3205/88

of 17 October 1988

extending the anti-dumping duty imposed by Regulation (EEC) No 535/87 to certain plain paper photocopiers 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 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), 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 abovementioned Regulation,

Whereas :

A. Procedure

(1) In January 1988, the Commission received a complaint lodged by CECOM, the Committee of European Copier Manufacturers, on behalf of producers of plain paper photocopiers (PPCs) whose collective output constitutes a major proportion of Community production of the product in question. The complaint contained sufficient evidence of the fact that, following the opening of the investigation concerning PPCs originating in Japan (2), which led to the adoption of Regulation (EEC) No 535/87 (3) imposing a definitive anti-dumping duty on imports of those products, a number of companies were assembling PPCs in the Community under the conditions referred to in Article 13 (10) of Regulation (EEC) No 2176/84, since replaced by Regulation (EEC) No 2423/88. Accordingly, after consultation, the Commission announced, by notice published in the *Official Journal of the European Communities* (4), the initiation of an investigation, under the said Article 13 (10), concerning PPCs assembled in the Community by companies related to or associated with the following Japanese manufacturers whose exports of PPCs are subject to a definitive anti-dumping duty :

— Canon Inc.,
— Konishiroku Photo Industry Co.,
— Matsushita Electric Co., Ltd,
— Minolta Camera Co., Ltd,
— Ricoh Company Ltd,
— Sharp Corporation,
— Toshiba Corporation.

(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 and the complainants made their views known in writing and requested and were granted hearings by the Commission.

(4) No submissions were made by purchasers of PPCs 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 :

— Canon Bretagne SA (France),
— Canon Giessen GmbH (Germany),
— Firma Develop Dr Eisbein GmbH (Germany),
— Konica Business Machines Manufacturing GmbH (Germany),
— Matsushita Business Machine (Europe) GmbH (Germany),
— Olivetti-Canon Industrial SpA (Italy),
— Ricoh (UK) Products Ltd (United Kingdom),
— Sharp Electronics (UK) Ltd (United Kingdom),
— Toshiba Systems (France) SA.

(5) Furthermore, the Commission carried out an investigation at the premises of a supplier of components to some of the companies involved. This supplier of components is a subsidiary of one of the Japanese exporters concerned.

(6) The period of investigation was from 1 April 1987 to 31 January 1988.

(7) Following investigation, the Commission established that Sharp Electronics (UK) Ltd had not assembled or produced PPCs in the Community prior to or during the investigation period but had started assembly or production operations following the opening of the present investigation in February 1988.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 194, 2. 8. 1985, p. 5.
(3) OJ No L 54, 24. 2. 1987, p. 12.
(4) OJ No C 44, 17. 2. 1988, p. 3.

(8) The Commission was, in addition, aware that one of the complainant companies, Rank Xerox Ltd, had, prior to and during the original investigation, assembled or produced certain PPCs in the Community using a significant proportion of parts and materials supplied by Fuji Xerox, a related company on whose exports of PPCs the definitive anti-dumping duty was imposed. Following a visit to Rank Xerox's premises at Mitcheldean, United Kingdom, where these assembly or production operations took place, the Commission established that these operations were not substantially increased after the opening of the anti-dumping investigation. In 1985, when the original anti-dumping investigation was opened, the number of relevant models assembled by Rank Xerox in the Community was lower than in the two previous years. By 1987, the total number of PPCs assembled or produced at Mitcheldean in this period, i.e. since 1983, had increased by only 4 %.

B. **Relationship or association with exporter**

(9) Most of the companies referred to in the fourth recital were found to be wholly owned subsidiaries of Japanese exporters of PPCs which were subject to the definitive anti-dumping duty imposed by Regulation (EEC) No 535/87. The exceptions are Olivetti-Canon SpA, in which Olivetti has a 50 % plus one shareholding and Canon the remainder, a joint venture between Canon Inc. and Ing. Olivetti SpA, and Firma Develop Dr Eisbein GmbH in which Minolta Camera Co. Ltd has a majority shareholding. Consequently, all firms concerned were considered to be related to a manufacturer whose exports of the like product are subject to a definitive anti-dumping duty.

C. **Production**

(10) Most of the companies referred to in the fourth recital commenced their assembly or production operations after the initiation, on 2 August 1985, of the anti-dumping proceeding concerning imports of PPCs originating in Japan. However, while both Olivetti and Develop had assembled or produced PPCs independently prior to the initiation of the anti-dumping proceeding, the relationship with the exporters concerned was created after the initiation of the original anti-dumping investigation. Prior to that date, no relationship or association of other than a purely commercial nature existed between either Olivetti or Develop with any Japanese exporter of PPCs and, accordingly, Article 13 (10) of Regulation (EEC) No 2423/88 could not apply at that time to these companies.

Following the creation of the Olivetti-Canon joint venture the models produced by this company have remained essentially those previously developed and produced by Olivetti. The numbers produced, however, have increased substantially.

As regards Develop, following Minolta's acquisition of a controlling interest in the company, assembly or production of certain models, previously produced by Minolta in Japan and exported to the Community, commenced in addition to the continued production of models previously developed and produced by Develop. In 1986, when assembly of the Minolta models began, the total units produced increased from the previous year by approximately 74 % and by a further 38 % in 1987 over the 1986 figure. The 'Minolta' models comprised 48 and 65 % respectively of the total units produced or assembled by Develop in 1986 and 1987. Thus, the assertion made by Develop that no substantial increase in the quantities assembled had occurred since that date was therefore not considered correct.

Most models produced by Olivetti-Canon during the reference period were those for which the research, development and production were carried out by Olivetti prior to the joint venture with Canon. The models for which production began subsequent to the creation of the joint venture were merely developed from previous models and contained many indentical parts to the earlier models. Accordingly, these new models had the same high level (well above 40 %) of non-Japanese parts in value as the earlier models.

Similary, Develop continued to produce, following the takeover by Minolta, two models and a development thereof which were the result of research, development and production both before and after the takeover. These models had a high level (well above 40 %) of non-Japanese parts in value. Accordingly, it is considered inappropriate to extend the anti-dumping duty to these models. However, the models previously exported by Minolta from Japan and assembled by Develop following the takeover had a high content (well above 60 %) of parts of Japanese origin.

(11) Only Canon was found to have set up assembly or production plants for PPCs in the Community prior to the opening of the anti-dumping investigation and for both these plants, Canon Giessen and Canon Bretagne, it was claimed that no substantial increase in quantities assembled had occurred since the date of the initiation. It was, however, established that, at both plants, volumes of models assembled increased by approximately 30 % in the year following the opening of the original investigation. Canon argued that this percentage increase was in line with those of previous years. In fact, the percentage increases had varied considerably and a 30 % increase from a large base is greater, in absolute terms, than from a

smaller base. In addition, at Giessen, where operations began in 1973, the 30 % increase followed a period of relative stability in production during which, from 1981 to 1985 inclusive, the number of units produced over the whole five year period increased by only 4,6 %. Thus, it was concluded that, on balance, it would not be reasonable to consider the respective increases at the Canon plants at Giessen and Bretagne as constituting less than substantial increases in terms of Article 13 (10) (a) of Regulation (EEC) No 2423/88.

D. Parts

(12) The value of the 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. The relevant value is that of the parts and materials as they are used in the assembly operations, that is on an into-factory basis.

(13) Several companies concerned claimed that certain subassembled items were of Community origin and that, in addition, they should be treated as parts within the meaning of Article 13 (10) of Regulation (EEC) No 2423/88. It was found, however, that these items were merely assembled in the Community, mainly from parts imported from Japan, by independent suppliers. On the basis of information obtained from the companies making the claim, it was concluded that this 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 and was not sufficient to confer Community origin.

A number of companies requested that the assembly costs of certain subassemblies, incurred in their 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 under Article 13 (10) of Regulation (EEC) No 2423/88.

(14) It was also requested by several companies that the costs of production of certain items incurred by them in the Community be included in the value of Community parts. Where such items constituted parts or materials within the meaning of Article 13 (10) (a) of Regulation (EEC) No 2423/88 and where such parts had acquired Community origin in conformity with Regulation (EEC) No 802/68 the inclusion of such costs in the value of non-Japanese parts was considered appropriate.

Canon

(15) At the three operations concerned, Canon Giessen, Canon Bretagne and Olivetti-Canon, different models are assembled or produced. The value of Japanese parts used by Canon varied considerably according to model, the weighted average value of Japanese parts for all models assembled at Canon Giessen being 53,8 % and Canon Bretagne 63,0 % and Olivetti-Canon 33,5 %.

Accordingly, the anti-dumping duty cannot be extended to those PPCs assembled in the Community by Canon Giessen and Olivetti-Canon.

Develop

(16) The weighted average value of Japanese parts for all models produced by Firma Develop Dr Eisbein was found to be 93,7 %.

Konica

(17) The weighted average value of Japanese parts for all models produced by Konica Business Machines Manufacturing was found to be 99,2 %.

Matsushita

(18) The weighted average value of Japanese parts for all models produced by Matsushita Business Machine (Europe) was found to be 98,4 %.

Ricoh

(19) The weighted average value of Japanese parts for all models produced by Ricoh (UK) Products was found to be 87,4 %.

Toshiba

(20) The weighted average value of Japanese parts for all models produced by Toshiba Systems (France) was found to be 70,0 %.

E. Other Circumstances

(21) 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 2423/88.

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

(22) In most cases it was found that the nature of the parts sourced in the Community was relatively simple and that they were of low value. Many parts of a higher technological value were imported from Japan and, at least in the initial stages of the assembly operations in the Community, few genuine attempts appear to have been made to substantially change the sourcing pattern. Indeed, it was found that more than one company began operations in the Community and continued for some time with 100 % of Japanese value of parts incorporated in the assembled PPC.

(23) Some companies claimed that it was not or not yet possible for them to find sources of supply in the Community which guarantee a required level of quality. This assertion, however, appears to confuse the distinct issues of quality and technical specifications since Community producers of PPCs of comparable quality to those of the companies concerned source their parts in the Community and have proved that it is not indispensable to use parts predominantly of Japanese origin. It has also been noted in previous cases that sourcing policy can be changed with considerable practical effect within a very short time frame.

(24) As to direct labour, it was found that a certain number of new jobs had been created by the companies concerned. 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 PPCs result in decreased sales by the Community producers, it can only be concluded that the functioning of the assembling companies is likely to result in a net loss of employment in the Community.

(25) Furthermore, as regards research and development, it was found that R & D was carried out in the Community only by the two companies, Develop and Olivetti, which had had an integrated PPC production operation prior to the creating of a corporate relationship with a Japanese exporter.

(26) Some companies claimed to have transferred technology to the Community by setting up assembly operations. The amount of technology transferred was, however, minimal and related merely to assembly.

F. Conclusions

(27) In view of the foregoing, it is concluded that the anti-dumping duty should be extended to certain PPCs 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

(28) 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. Certain of these companies offered undertakings referring, in particular, to the attainment of a certain proportion of parts originating in the Community. The undertakings offered by Canon Bretagne, Develop and Ricoh are considered acceptable by the Commission which is publishing a Decision to that effect. The anti-dumping duty should accordingly not be extended to PPCs assembled in the Community by these companies. The Commission will examine the acceptability of any further undertakings offered and proceed to the necessary verification as soon as it has been informed by the companies concerned that the conditions justifiying 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 535/87 on imports of plain paper photocopiers incorporating an optical system, originating in Japan, is hereby also imposed on plain paper photocopiers incorporating an optical system, corresponding to CN codes ex 9009 11 00, ex 9009 12 00 and ex 9009 21 00, introduced into the commerce of the Community after, having been assembled or produced in the Community by :

— Konica Business Machines Manufacturing GmbH, Lüneburg,

— Matsushita Business Machine (Europe) GmbH, Neumünster,

— Toshiba Systems (France) SA, Arques-la-Bataille.

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

— Konica Business Machines Manufacturing GmbH 225 ECU,

— Matsushita Business Machine (Europe) GmbH 192 ECU,

— Toshiba Systems (France) SA 28 ECU.

Article 2

1. Parts and materials suitable for use in the assembly or production of plain paper photocopiers 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. Plain paper photocopiers 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 delcaration 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.*

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

Done at Luxembourg, 17 October 1988.

For the Council

The President

Y. POTTAKIS

(1) OJ No L 205, 13. 8. 1979, p. 19.