COMMISSION REGULATION (EEC) No 1103/93

of 30 April 1993

imposing a provisional anti-dumping duty on imports into the Community of certain electronic weighing scales originating in Singapore and the Republic of Korea

THE COMMISSION 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 11 thereof,

After consultation within the Advisory Committee as provided for under the above Regulation,

Whereas:

A. PROCEDURE

(1) In January 1992, on the basis of a complaint lodged by several Community producers allegedly representing a major proportion of the Community production, the Commission, by means of a notice published in the *Official Journal of the European Communities* (2), initiated an anti-dumping proceeding concerning imports into the Community of certain retail electronic weighing sales (hereafter referred to as REWS) originating in Singapore and falling within CN code 8423 81 50, and commenced an investigation.

(2) In March 1992, a further complaint was introduced by the same Community manufacturers as mentioned in recital 1 to extend the proceeding concerning imports of REWS originating in Singapore to imports of the same type of product originating in the Republic of Korea.

(3) In April 1992, the Commission published a notice of extension (3) by which the imports of REWS originating in the Republic of Korea were included in the proceeding concerning imports of this product originating in Singapore.

(4) The Commission officially notified the exporters and the Community importers and producers known to be concerned and gave them the opportunity to make known their views in writing and to request a hearing.

(5) Representatives of the exporters and most of the complainant Community producers made their views known in writing. Submissions were also made by a number of importers. Some of these parties requested and were granted hearings.

(6) The Commission sought and verified all information it considered necessary for a preliminary determination of dumping and injury and carried out investigations at the premises of the following:

(a) Community producers:

— Bizerba Werke GmbH, Balingen, Germany,
— Gec Avery, Smethwick, United Kingdom,
— Maatschappij van Berkels Patent NV, Rijswijk, Netherland,
— Testut, Béthune, France,
— Lutrana, Viry-Châtillon, France,
— Brevetti van Berkel Spa, Milan, Italy,
— Santo Stefano Spa, Cassano Magnago, Italy,
— Vandoni Spa, San Donato Milanese, Italy,
— Grupo Campesa, Barcelona, Spain.

These Community producers account for approximately 80 % of the total Community production of REWS.

(b) Singaporian exporting producers:

— Teraoka Weigh-System PTE, Singapore.

(c) Korean exporting producers:

— Cas Corporation, Seoul,
— Descom Scales Manufacturing Co. Ltd, Seoul, formerly Dailim-Ishida Scales Mfg Co. Ltd, Seoul,
— Han Instrumentation Technology Co. Ltd, Seoul.

(d) Unrelated importers:

— Biesta BV, Leusden, Netherlands,
— Carrin & Co NV, Antwerp, Belgium,
— Digi System NV, Antwerp, Belgium,
— Herbert & Sons, Suffolk, United Kingdom.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 6, 10. 1. 1992, p. 2.
(3) OJ No C 84, 4. 4. 1992, p. 14.

(7) The Commission requested and received written and oral submissions from the complainants, from the exporters named and from a number of unrelated importers and verified the information provided to the extent considered necessary.

(8) The investigation into dumping practices covered the period 1 January to 31 December 1991 (investigation period).

B. PRODUCT

1. Product description

(9) The products under investigation are electronic weighing 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 this data) falling within CN code 8423 81 50. REWS are produced with different types or levels of performance and technology. In this respect, the industry defines three segments of REWS, i.e. the

— low-range segment which comprises stand-alone REWS, without built-in printer and without preset key system,

— mid-range segment with built-in printer and an additional preset key system,

— top-range segment with the additional possibility of being part of a system and of being computer-related.

Although the potential use and quality of REWS can vary, there is no significant difference in the basic physical characteristics, or marketing methods within the various types of REWS.

In addition, between these three segments there are no clear dividing lines, models in neighbouring segments often being interchangeable. They have, therefore, to be considered as one product for the purposes of this proceeding.

2. Like product

(10) The investigation has shown that the various REWS sold on the Korean and Singaporean market are, despite differences in size, life-span, voltage or design, identical to or closely resemble the REWS exported from Korea and Singapore to the Community and accordingly have to be considered as like products.

Likewise, apart from minor technical differences, the range of Community-produced REWS in all three segments are alike in all respects to the REWS exported from Korea and Singapore to the Community.

C. DUMPING

1. Singapore

1.1. *Normal value*

(11) Normal value was established on the basis of the weighted average domestic prices for models sold in the ordinary course of trade.

The prices were net of all discounts and rebates directly related to the sales of REWS.

(12) A small quantity of sample sales made at prices which represented 50 % of their cost of production were considered as not having been made in the normal course of trade and were therefore excluded from the transaction on which normal value was calculated.

The remaining domestic sales were considered sufficiently representative as a basis for normal value since they exceeded 5 % of the export sales to the Community.

1.2. *Export price*

(13) Export sales were made directly to independent importers in the Community. Export prices were therefore determined on the basis of the prices actually paid or payable for the product sold for export to the Community.

1.3. *Comparison*

(14) In comparing the normal value with export prices, transaction by transaction, the Commission, in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88, took account, where warranted, of the differences affecting price comparability such as physical characteristics, salesmen's salaries and direct selling expenses — i.e., credit terms, transport, insurance and handling costs, packing, technical assistance and ancillary costs — where the direct relationship of these expenses to the sales under consideration could be satisfactorily demonstrated.

All comparisons were made at the ex works stage and at the same level of trade.

1.4. *Dumping margin*

(15) The weighted average dumping margin for Teraoka Weigh-System PTE Ltd, as a percentage of the free-at-Community-frontier value of imports, duty unpaid, is 8,5 %.

(16) In the case of firms which failed to cooperate in the investigation, the Commission considered that the dumping margin should be established on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. It was considered that the most reasonable facts were those established during the investigation and that it would constitute a bonus for non-cooperation and could lead to circumvention of the anti-dumping measures should such firms be considered to have sold to the Community at a price higher than the lowest established for the cooperating company, which accounted for approximately 80 % of exports to the Community. Consequently, the dumping margin for non-cooperating companies was calculated to amount to 31 %.

2. Republic of Korea

2.1. *Export prices*

Sales to independent importers

(17) Where sales were made directly to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the product sold for export to the Community. The Korean producers identified these sales as being made at the level of importer/distributor or dealer, and the Commission is satisfied, on the basis of the evidence presented, that this was the case.

In accepting this claim, the Commission took account of the functions of both seller and buyer based on the costs incurred and the quantities sold, on a consistency in the prices charged at the particular level and, finally, on the evidence available on the distribution chain.

Sales to related importers

(18) Where exports were made to related importers in the Community, export prices were constructed, in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88, on the basis of resale prices to the first independent purchaser adjusted to take account of all costs incurred between importation and resale together with a 5 % profit margin which was considered reasonable in view of the information available to the Commission from the unrelated importer which cooperated.

The Commission accepted a Korean producer's claim that the export prices, reconstructed to a cif Community frontier basis, were made at the level of importer/distributor. The claim was accepted on the same grounds as outlined above for sales to independent importers.

2.2. *Normal value*

(a) Normal value based on prices in the exporting country

(19) For the three exporters cooperating in this proceeding, normal value for the models exported to the Community had been established on the basis of the weighted average domestic selling price as these models were sold in sufficient quantities (exceeding 5 % of the export sales to the Community) and at prices permitting the recovery of all costs reasonably allocated in the ordinary course of trade on the domestic market in Korea.

The prices were net of all discounts and rebates directly related to the domestic sales of REWS.

(b) Selective normal value

(20) Two of the three Korean exporters claimed that a distinction should be made between categories of their independent buyers on the domestic market, and that normal value should be established selectively on the basis of the weighted average prices of their sales to a specific category of independent customer, i.e. alleged dealers, which they claimed to be at the most appropriate level of trade for comparison with their export sales. They contended in particular that this special category of customer had different functions from the other unrelated customers, which were reflected in the scale and type of costs incurred, the quantities sold and in the pattern of prices charged.

(21) In this respect, it is the Community institutions' consistent position that a specific level of trade can only be adequately identified if a demonstration is made of all relevant factors including the functions of both seller and buyer and the consistency of quantities, costs and prices at the distribution level in question in relation to other levels.

Another important question in identifying a specific category of customer is how it stands in relation to the distribution system of the market concerned and whether this comparison can indicate that only this category should be compared to export customers which hold a similar position in the distribution system of the export market.

(22) After an examination of the sales structure of the exporting producers in the domestic market and in the Community, the Commission took the view that this claim should be rejected. Indeed, the producers failed to establish adequately a consistency of quantities, costs and prices at one distribution level in relation to other levels. In fact the evidence provided on some of these factors for the specific category of customer in question showed that they were similar to a significant degree to other categories alleged to be different.

(23) In these circumstances, the Commission concluded for the producers in question, that the evidence presented was insufficient to demonstrate that sales were made to specific and clearly distinguishable categories of customer or that only one of these allegedly different categories was more appropriate than all domestic sales for comparison with the export prices. Thus, normal value for these producers was determined on the basis of all sales to independent customers.

2.3. *Comparison*

(24) Since prices varied, normal value was compared with export prices on a transaction-by-transaction basis. The Commission, in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88, took account, where warranted, of the differences affecting price comparability, such as physical characteristics, sales personnel salaries and direct selling expenses, i.e., credit terms, transport, insurance and handling costs, packing, technical assistance and ancillary costs, where a direct relationship of these differences to the sales under consideration could be satisfactorily demonstrated.

All comparisons were made at the ex works stage and at the same level of trade.

(25) Two Korean producers concerned claimed that the normal value should be reduced in respect of certain alleged rebates granted to their customers on the domestic market to which running account facilities for these customers' purchases of all products in the producers' range were made available. However, the Commission found that the rebates in question, in addition to not being specifically related to weighing scales, were not granted on the basis of the value of the sales made but according to the reduction in the level of the overall outstanding balance. Accordingly, it was concluded that there was no direct link between the rebate and the sales under consideration.

(26) For two Korean producers, the amount of the allowance claimed for sales personnel salaries was adjusted to take account of the fact that some of the personnel for which the allowance hade been claimed were not wholly engaged in direct selling activities. Likewise, the amount for transport was reduced since the costs to which the allowance referred included general travel and communication expenses. Such costs could not be directly linked to the sale of the product and accordingly are not allowable pursuant to Article 2 (10) of Regulation (EEC) No 2423/88.

2.4. *Dumping margins*

(27) The weighted average dumping margins for each Korean exporter concerned, as a percentage of the free-at-Community-frontier value of imports, were as follows :

— Cas Corporation 9,3 %,

— Descom Scales Manufacturing Co. Ltd 29,0 %,

— Han Instrumentation Technology Co. Ltd 7,2 %.

(28) In the case of firms which failed to cooperate in the investigation, the dumping margin should be established on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. The Commission considered that the most reasonable facts were those established during the investigation and that it would constitute a bonus for non-cooperation and could

lead to circumvention of anti-dumping measures should such firms be attributed a dumping margin lower than the highest established for the cooperating companies which accounted for approximately 85 % of exports to the Community. Consequently, the dumping margin for non-cooperating companies should amount to 29,0 %.

D. INJURY

1. Cumulation

(29) When considering whether the effects of Korean and Singaporean imports had to be analysed cumulatively, the Commission took account of the fact that the exported products of each of the countries concerned were alike in all respects or closely resembled each other, were interchangeable, and were marketed in the Community within a comparable period. They also competed with each other and with REWS produced in the Community. In addition, the market share both of Korean and of Singaporean exporters is significant.

Consequently, the effect of the dumped imports concerned on the Community industry was assessed jointly.

2. Injury factors

2.1. *Exporters' behaviour on the Community market*

(a) Evolution of Community consumption

(30) The Community market for REWS decreased slightly from approximately 140 000 units sold in 1989 to 135 000 units in 1990 and remained at the same level in 1991 (135 000 units sold).

(b) Volume and market share of the dumped imports from Singapore and Korea

(31) The volume of dumped REWS imported from Singapore and Korea increased from 3 208 units in 1988 to 14 031 units in 1991. The market share held by these two countries rose from 2,3 % in 1988 to 10,3 % in 1991.

(c) Price of the dumped imports

(32) The Commission investigated whether price undercutting was practised by the Korean and Singaporean exporters during the investigation period. This was examined in relation to the sales of the exporters in the major Community markets (United Kingdom, Germany, Belgium, Netherlands, Portugal, France and Greece) where these producers sold nearly all exported REWS.

(33) A comparison between the prices of representative models marketed by the Community industry and those of the comparable models of the exporters concerned was made on the basis of sales taken at the same level of trade (prices to unrelated distributors or dealers) on the major Community markets during the investigation period. No adjustment for technical differences had to be made because the models selected were identical in the perception of the buyer. The comparison outlined above showed price undercutting which, for all companies, exceeded 20 % and 30 % in the case of the Korean exporter found to have the highest dumping margin.

2.2. *Situation of the Community industry*

(a) Production and utilization of capacity

(34) Community production of REWS fell from 140 000 units in 1988 to 107 000 units in 1991, i.e., by some 23 %. At the same time, production capacity decreased from 181 000 in 1988 to 140 000 in 1991.

The utilization rates have fallen from 77 % in 1988 to 73 % in 1990. A small increase from 1990 to 1991 resulted mainly from the closure of a Community manufacturer with a significant production capacity.

(b) Sales volume and market shares of the Community industry

(35) The quantity of REWS sold in the Community by the Community industry fell from 113 000 units in 1988 to 105 000 units in 1989 and to 84 600 units in 1991. The Community industry's market share declined as follows : 84 % in 1988, 75 % in 1989, 72 % in 1990 and 62 % in 1991.

(c) Price development

(36) The prices of the Community industry decreased between 1988 and 1991 by nearly 6 % on a weighted average basis and this despite increasing costs.

(d) Profits

(37) The Commission found that, overall, the Community industry had recorded losses since 1988 for sales in the Community. The apparent improvement from 1990 to 1991, i.e. the reduced loss on turnover on a weighted average basis from 5,5 to 1 %, merely derived from the closure in 1990 of a Community producer which had recorded considerable losses from 1988 until its closure.

(e) Employment and investment

(38) Between 1988 and 1991 the Community industry shed 378 jobs, i.e. 25 % of its labour force. Investments were cut back and two factories closed.

(f) Stocks

(39) Stocks remained at a continuously high level between 1988 and 1991. The small decrease apparent in 1990 derived from the closure of a Community producer in that year.

2.3. *Conclusions*

(40) In conclusion, the Commission considers that the Community industry suffered material injury which consisted mainly in persistent financial losses, decline in market share, employment cut backs and a decrease in investment. Community producers were forced to reduce their production or to shut down plants.

3. Causation of injury

3.1. *Effects of dumped imports*

(41) In its examination of the cause of the material injury suffered by the Community industry the Commission found that the increase of dumped Korean and Singaporean imports coincided with a significant loss of market share, price erosion and reduced profitability on the part of the Community industry.

(42) The decline in market shares between 1988 and 1991 from 84 to 62 %, occurred while the Community industry was under attack from two sides. On the one hand, it suffered from the impact of dumped Japanese imports (see Council Regulation (EEC) No 993/93 [1]), especially in the medium and high segments of REWS, and on the other hand, it had to face the rapid penetration of the dumped Korean and Singaporean imports particularly in the low-range models whose market share increased over the same period, from 2 to nearly 11 %.

(43) This situation was aggravated by the fact that the dumped imports were sold in an open and transparent market where prices were well known. Price elasticity combined with considerable price undercutting due to dumping had, therefore, a clear effect on the sales volumes and the profit and loss results of the Community industry.

(44) The investigation showed, as far as the exporters were concerned, an overall price decrease from 1988 to 1991 by 4 % on a weighted average basis. The Community producers had to adjust their prices to meet this downward trend. Furthermore, price undercutting was widespread and practised constantly on the Community market by the Korean and Singaporean exporters.

(45) In this respect, it has been found that, at the bottom end of the market, Singaporean and Korean producers compete to a very large extent on price alone, with products of comparatively standard technology and no significant differences in features and quality. The appearance and the rapid penetration of Singaporean and Korean exports to the Community could thus not fail to affect negatively the sales volume, sales prices, market shares and profitability of the Community industry.

3.2. *Other factors*

(46) The Commission also considered whether other factors than the dumped imports could have prevented the Community industry from making a reasonable return on sales in the Community.

(47) In this respect, one exporter alleged that the effects of the increase in volume and the low price of REWS imports from other countries, principally Japan, Taiwan and Turkey, have been at least co-responsible for the injury suffered by the Community industry.

(48) The Council has already found (see recital 42) that many of the economic difficulties encountered by the Community REWS industry have been caused by dumped Japanese imports. However, this does not detract from the conclusion that the dumped Singaporean and Korean imports also had substantial influence on the injurious situation of the Community industry.

[1] OJ No L 104, 29. 4. 1993, p. 4.

(49) As far as imports from Taiwan are concerned, the Commission found that these imported scales are mostly counting scales which are not alike to the product concerned.

(50) Finally, it appeared that there were no imports from Turkey during the investigation period.

(51) The Commission did not find any other factors which could explain the precarious economic situation of the Community industry. Indeed, there were neither substantial imports, other than those mentioned above, nor was there any contraction in demand between 1990 and 1991.

3.3. *Conclusion*

(52) In these circumstances, and even taking into account that the Japanese imports have also contributed to the poor situation of the Community industry, the Commission has come to the conclusion, for the purpose of a provisional determination, that the effects of dumped imports of REWS originating in Korea and Singapore, taken in isolation, have to be considered as causing material injury to the Community industry.

E. COMMUNITY INTEREST

General considerations

(53) The purpose of anti-dumping duties is, in general, to remove the injury and to eliminate the distortions caused by unfair trade in order to re-establish a situation of open and fair competition. Such a re-establishment is in the general interest of the Community.

(54) For the Community industry concerned, the Council, in recitals 94 to 98 of Regulation (EEC) No 993/93 concerning Japan, has already established that Community interests call for intervention. The Commission did not find any element which would justify that a different approach be taken for this proceeding.

F. LEVEL OF THE DUTIES

(55) According to Article 13 (3) of Regulation (EEC) No 2423/88, the amount of the duty necessary to prevent injury during the further proceeding should not exceed the dumping margin or the level necessary to remove injury, whichever is lower. Since, in the present case, the level of injury (see recitals 32 and 33 regarding price undercutting) exceeds the dumping margin, the latter should form the basis of the anti-dumping duty to be provisionally imposed.

(56) Accordingly, the following duties should be imposed :

— Cas Corporation, Seoul 9,3 %,

— Han Instrumention Technology Co. Ltd, Seoul 7,2 %,

— Descom Scales Manufacturing Co. Ltd, Seoul 29,0 %,

— Teraoka Weigh-System PTE Ltd, Singapore 8,5 %.

(57) In the case of firms which failed to cooperate in the investigation, the Commission considered that the duty should be established on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. It was considered that the most reasonable facts were those established during the investigation and that it would constitute a bonus for non-cooperation and could lead to circumvention of the anti-dumping measures should such firms be attributed a duty lower than the highest dumping margins established for the cooperating companies, namely 31 % for products originating from Singapore and 29 % for products originating from Korea.

G. FINAL PROVISION

(58) In the interest of sound administration, a period should be fixed within which the parties concerned may make their views known in writing and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of electronic weighing 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 this data falling within CN code 8423 81 50 (Taric code : 8423 81 50*10) and originating in the Republic of Korea and Singapore.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows :

(a) Korea

Products manufactured by :	
Han Instrumentation Technology Co. Ltd, Seoul (Taric additional code 8700)	7,2 %,
Cas Corporation, Seoul (Taric additional code 8701)	9,3 %,
All others (Taric additional code 8702)	29,0 % ;

(b) Singapore

Products manufactured by :	
Teraoka Weigh Systems PTE, Ltd (Taric additional code 8703)	8,5 %,
All others (Taric additional code 8704)	31,0 %.

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 2

Without prejudice to Article 7 (4) (b) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within one month from the date of entry into force of this Regulation.

Article 3

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

Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation 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, 30 April 1993.

For the Commission

Leon BRITTAN

Member of the Commission