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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2887/93

of 20 October 1993

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

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 12 thereof,

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

Whereas,

A. PROVISIONAL MEASURES

(1) By Regulation (EEC) No 1103/93 (2) the Commission imposed a provisional anti-dumping duty on imports into the Community of retail electronic weighing scales (hereinafter referred to as 'REWS' originating in Singapore and the Republic of Korea (hereinafter 'Korea') and falling within CN code 8423 81 50. The provisional anti-dumping duty was extended for a maximum perid of two months by Council Regulation (EEC) No 1967/93 (3).

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping duty, the cooperating Singaporean producer requested, and was granted, an opportunity to be heard by the Commission and made its views known in writing, as did two of the Korean producers concerned.

(3) The Commission continued to seek and verify all information it deemed to be necessary for its definitive findings. The parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of the amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to these disclosures. Their representations were considered and, where appropriate, the Commission's findings were modified to take account of them.

C. DUMPING

I. Normal value

(4) For the purpose of definitive findings normal value was established on the basis of the same methods as those used in the provisional determination of dumping. Certain calculation adjustments were made on the basis of submissions by the parties.

2. Export prices

(5) One Korean producer which sold to its parent in Japan which in turn sold to its related company in the Community continued to contest the Commission's position that the export price was unreliable and should, therefore, be constructed in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88. It argued that, in its case, the price of its related company in the Community to unrelated customers should be considered to be the price payable for the product sold for export to the Community, within the meaning of Article 2 (8) (a) of Regulation (EEC) No 2423/88, that the related company in the Community did not perform the functions of an importer and that the questionnaire addressed by the Commission to that company had thus received no reply.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 112, 6. 5. 1993, p. 20.
(3) OJ No L 179, 22. 7. 1993, p. 1.

(6) However, the Commission came to the conclusion that this price could not be regarded as the price mentioned in Article 2 (8) (a) of Regulation (EEC) No 2423/88, since it became clear, from the limited information made available to the Commission, that the related company in the Community was concerned with sales to unrelated customers by virtue of processing orders, performing marketing functions, invoicing these customers in the Community and receiving payment.

This related company therefore incurred costs normally borne by an importer. In these circumstances, the export price was constructed on the basis of the price to the first independent buyer, as provided for in Article 2 (8) (b) of Regulation (EEC) No 2423/88.

Consequently, the price actually paid to the related company in the Community by the first independent customer was adjustsed by the costs of this related company, established according to Article 7 (7) (b) of Regulation (EEC) No 2423/88, on the basis of the abovementioned information, and a reasonable profit of 5 % as set out in recital 18 of Regulation (EEC) No 1103/93.

(7) The Council confirms the findings and conclusions of the Commission on export prices as set out in recitals 13, 14, 17, 18 and 24 of Regulation (EEC) No 1103/93, on the content of which no substantial comment was made by the three remaining producers.

3. Comparison

(8) One exporter claimed additional adjustments on normal value for warranty or guarantee terms, as well as adjustments for physical characteristics and sales staff salaries, but was not in a position to link the costs directly to the particular sales transactions regarding the product under consideration. The claim was consequently rejected by the Commission.

(9) For one exporting producer, normal value was reduced by an allowance corresponding to import charges borne on materials physically incorporated in the like product when destined for domestic consumption and refunded when exported to the Community, as this claim was substantiated.

(10) The findings and conclusions set out in recitals 14 and 24 of Regulation (EEC) No 1103/93 are also confirmed.

4. Dumping margins

(11) The definitive examination of the facts showed the existence of dumping in respect of imports of the product concerned originating in Korea and Singapore.

(12) The weighted average dumping margin definitively established for Teraoka Weigh-system PTE Ltd, Singapore, and expressed as a percentage of the free-at-Community-frontier value of imports, duty unpaid, is 10,8 %.

(13) The weighted average dumping margins definitively established for each Korean producer concerned and expressed as a percentage of the free-at-Community-frontier value of imports, duty unpaid, are as follows :

— Cas Corporationb	9,3 %
— Han Instrumentation Technology Co. Ltd	7,2 %
— Descom Scales Manufacturing Co. Ltd	26,7 %.

(14) In the case of companies which failed to cooperate in the investigation, the Council confirms the Commission's position as set out in recitals 16 and 28 of Regulation (EEC) No 1103/93. Consequently, the definitive dumping margin for non-cooperating companies should amount to 26,7 % for Korea and 31 % for Singapore.

D. INJURY

1. Cumulation

(15) The effects of Korean and Singaporean imports had to be analysed cumulatively, as set out in recital 29 of Regulation (EEC) No 1103/93.

2. Determination of injury

(16) The Commission concluded in its provisional findings, as set out in recitals 30 to 40 of Regulation (EEC) No 1103/93, that the Community industry had suffered material injury. No new facts concerning these findings were subsequently put forward in this connection. This conclusion is confirmed.

3. Causation of injury

(17) The Coimmission pointed out in its preliminary conclusions that the substantial injury sustained by Community producers had been caused by dumped Korean and Singaporean imports (recitals 41 to 52 of Regulation (EEC) No 1103/93). No new arguments were put forward in this connection.

It is confirmed that the material injury sustained by Community producers has been caused by dumped Korean and Singaporean imports.

E. COMMUNITY INTEREST

(18) In the Commission's provisional findings on imports of REWS originating in Singapore and Korea, as set out in recitals 53 and 54 of Regulation (EEC) No 1103/93, as well as in the Council's definitive findings on imports of REWS originating in Japan, as set out in recitals 94 to 98 of Council Regulation (EEC) No 993/93 (1), the interests of the Community industry, of the consumers and of other industries and activities concerned have been considered. No new arguments were put forward in this connection.

(19) Therefore, the findings of Regulation (EEC) No 1103/93 in this respect are confirmed.

F. DUTY

(20) Provisional measures took the form of anti-dumping duties; these were imposed for the Korean and Singaporean producers at the level of the dumping margins established since the level necessary to remove injury exceeds the dumping margin as set out in recital 55 of Regulation (EEC) No 1103/93. No new arguments were put forward to contradict this approach.

Therefore, duties should be imposed at the level of the dumping margins definitively determined in recitals 12, 13 and 14 of this Regulation.

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

— Han Instrumentation Technology Co., Ltd, Seoul:	7,2 %
— Cas Corporation, Seoul:	9,3 %
— Teraoka Weigh-System PTE Ltd, Singapore:	10,8 %
— Desoom Scales Manufacturing Co., Ltd, Seoul:	26,7 %.

(22) In the case of firms which failed to cooperate in the investigation, the Commission considered in recital 57 of Regulation (EEC) No 1103/93 that the duty should be established on the basis of the facts available in accordance with Article 7 (7) (b) of Member 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 noun-cooperation and could lead to circumvention of the anti-dumping measures should such firms be attributed a duty lower than the dumping margins established, as set out in recital 28 of Regulation (EEC) No 1103/93 for the cooperating Korean companies, namely 26,7 % definitively, and as set out in recital 16 of that Regulation for products originating from Singapore, 31 %.

(1) OJ No L 104, 29. 4. 1993, p. 4.

G. COLLECTION OF PROVISIONAL DUTIES

(23) In view of the nature and the level of the injury caused to the Community industry by the dumped imports and, since the Commission's provisional findings are, for the most part, definitively, confirmed, it is necessary that amounts secured by way of provisional anti-dumping duties should be definitively collected to the extent of the duty rate definitively imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive 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 these 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 the 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);	26,7 %

(b) Singapore

Products manufactured by:

— Teraoka Weigh-System PTE Ltd, Singapore (Taric additional code 8703),	10,8 %
— All others (Taric additional code 8704)	31,0 %.

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

Article 2

The amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 1103/93 shall be definitively collected at the duty rate definitively imposed. Amounts secured in excess of the definitive rate of duty shall be released.

Article 3

This Regulation shall enter into force on the day following 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, 20 October 1993.

For the Council

The President

A. BOURGEOIS