COMMISSION REGULATION (EC) No 984/97

of 30 May 1997

terminating the investigation concerning the circumvention of anti-dumping measures imposed by Council Regulations (EEC) No 993/93 and (EEC) No 2887/93 on imports of certain electronic weighing scales originating in Japan and Singapore, by imports of parts thereof assembled in the European Community and ceasing registration of these parts

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as amended by Regulation (EC) No 2331/96 [2], and in particular Articles 9, 13 and 14 thereof,

After consulting the Advisory Committee,

Whereas:

A. POCEDURE

(1) On 31 August 1996, by Regulation (EC) No 1718/96 [3], the Commission initiated an investigation, pursuant to Article 13 of Regulation (EC) No 384/96 (herefter the 'Basic Regulation'), concerning the alleged circumvention of the anti-dumping duties, imposed with respect to Teraoka Seiko Co., Ltd (Japan) and Teraoka Weigh-System PTE Ltd (Singapore), by Council Regulation (EEC) No 993/93 [4] and by Council Regulation (EEC) No 2887/93 [5], as amended by Regulation (EC) No 2937/95 [6], on imports of certain electronic weighing scales originating respectively in Japan and Singapore, by imports of parts thereof which were subsequently used in the assembly of these weighing scales in the Community and instructed customs authorities, pursuant to Articles 13 (3) and 14 (5) of the Basic Regulation, to register the imports covered by this investigation.

The investigation was initiated following a request lodged on 19 July 1996, on behalf of the Community industry, by the following companies:

— Bizerba GmbH & Co., KG,

— Campesa SA,

— Dataprocess SpA,

— Dataprocess Industria SpA,

— Testut SA,

— Lutrana SA,

— GEC Avery Ltd,

— Maatschappij Van Berkel's Patent BV,

— Brevetti van Berkel SpA.

(2) The request contained evidence in accordance with Article 13 (3) of the Basic Regulation that the anti-dumping duties imposed on imports of electronic weighing scales originating in Japan and Singapore were being circumvented through an assembly operation in the Community. This evidence was considered to be sufficient to justify the initiation of an investigation.

(3) The alleged circumvention consists of the import of parts which are used for the assembly in the Community 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 (hereafter 'REWS'). The REWS fall within CN code 8423 81 50 while the parts in question (hereafter 'REWS parts') are currently classifiable within CN code ex 8423 90 00.

(4) The Commission officially advised the authorities of Japan and Singapore as well as the complainants, exporters, importers and the assembler known to be concerned about the initiation of the investigation and sent questionnaires to the exporters, importers and to the assembler in the Community mentioned in the request. The companies concerned made their views known in writing and requested and were granted hearings by the Commission.

(5) The investigation covered the period 1 July 1995 to 30 June 1996.

(6) The Commission received complete replies from the following companies:

(i) *Exporters of REWS parts*

— Teroaka Seiko Co., Ltd (Japan) (hereafter 'Teraoka Seiko') *,

— Teraoka Weigh-System PTE Ltd (Singapore) (hereafter 'Teraoka WS') *,

— Shanghai Teraoka Electronic Co., Ltd. (the People's Republic of China);

[1] OJ No L 56, 6. 3. 1996, p. 1.
[2] OJ No L 317, 6. 12. 1996, p. 1.
[3] OJ No L 221, 31. 8. 1996, p. 50.
[4] OJ No L 104, 29. 4. 1993, p. 4.
[5] OJ No L 263, 22. 10. 1993, p. 1.
[6] OJ No L 307, 20. 12. 1995, p. 30.

(ii) *Importers, assembler and companies selling the assembled REWS*

— Digi Nederland BV (Purmurend, the Netherlands) (hereafter 'Digi Nederland') *,

— Circuit Technology Woerden BV (Woerden, the Netherlands) (hereafter 'CTW') *,

— Keylard Produktie BV (Purmurend, the Netherlands) (hereafter 'Keylard') *,

— Carrin & Co, NV (Antwerp, Belgium) *,

— Digi Waagenvertrieb GmbH (Germany),

— Digi France SA (France),

— Digi Europe Ltd (United Kingdom) (hereafter 'DEL').

(7) The Commission verified all the information it deemed necessary and carried out verification visits at the premises of the companies indicated above with an asterisk.

B. SCOPE OF THE INVESTIGATION

(8) Article 13 (1) first sentence, of the Basic Regulation provides that anti-dumping measures in force may be extended to imports of parts from the country subject to the measures when circumvention of the measures is taking place. As it was established in the course of the present investigation that the alleged circumvention practice consisted of an assembly operation in the Community, the scope of the present investigation was to examine whether the criteria, set out in Article 13 (2) of the Basic Regulation, were met.

C. FINDINGS

1. Nature of the circumvention practice: assembly in the Community

(9) The investigation has established that the assembly operation was in fact conducted by three Dutch companies acting in close cooperation and belonging to the same corporate group. A first company (CTW) was processing printed circuit boards (hereafter 'PCBs') for a wide variety of applications, including for use in REWS. It purchased parts of such PCBs from unrelated suppliers and, to a significant extent, from Keylard, as associated company. Keylard assembled two 'Digi' ('Digi' is the trade mark under which Teraoka Seiko, Teraoka WS and their related companies market REWS) REWS models from parts which, apart from the finished PCBs purchased from CTW, were directly purchased from Teraoka Seiko or Teraoka WS. At a third related company (Digi Nederland), platform software was developed for high-end REWS sold in the Community and completion operations took place, consisting essentially of customizing of the REWS concerned, both in terms of hardware and software, for customers in the Community. The products thus assembled were then sold either via Digi Nederland on the Dutch market and via the latter's sales subsidiaries on the Belgian, French and German markets or via DEL (UK), a company fully controlled by Teraoka Seiko, on other markets in the Community.

2. Conditions of Article 13 (2)

(i) *Article 13 (2) (a): start or substantial increase of assembly operations since, or just prior to, the initiation of the anti-dumping investigation*

(10) The assembly operation, described above in recital 9, started in January 1995, i.e. clearly after the initiation of the anti-dumping investigations with respect to Japan (procedure initiated on 26 February 1991) and Singapore (procedure initiated on 10 January 1992).

More specifically, from documents obtained at the verifications, it transpired that the decision by Teraoka Seiko to entrust the assembly of two Digi REWS models to Keylard/Digi Nederland was taken in view of the initiation of an anti-absorption investigation (initiated on 11 May 1994) with respect to REWS originating in Singapore and of the perceived high likelihood that an anti-absorption duty would effectively be imposed on exports to the Community of REWS by Teraoka WS. This was evidenced by a change in the pattern of trade as far as the main REWS model assembled by Keylard/Digi Nederland was concerned in that exports to the Community of such finished REWS by Teraoka WS were largely subsituted by exports to the Community of REWS parts by the same company.

(ii) *Article 13 (2) (b) — the '60 % value of parts' test: parts from the country subject to measures 'constitute 60 % or more of the total value of the parts of the assembled product'*

(11) The value of the REWS parts was generally established on the basis of the purchase prices of the parts when delivered to the assembler's premises, that is on an into-factory basis. In view of the fact that CTW, Keylard and Digi Nederland were found to be related and functionally interdependent enterprises closely working together in the assembly of REWS, they were considered to be part of a single economic entity, together constituting the assembler. Consequently, parts were in principle identified and their value determined when

first entering this single economic entity. Intra-group transfers of parts and semi-finished or finished products were therefore disregarded for purposes of this value of parts test. However value-added to the parts after they were brought into the single economic entity were accounted for under the vaue-added test, in so far as appropriate (see recitals 15 and 16).

(12) All REWS parts destined for assembly by Keylard were directly exported by Teraoka WS or Teraoka Seiko to Keylard, with the exception of the PCBs which were purchased from the Dutch associate company CTW. All REWS parts thus purchased by Keylard were found to have been used in the assembly of Digi REWS by Keylard rather than for any other purpose such as servicing.

(13) The Commission established that the prices charged by the exporters of REWS parts to the assembler were at arms length, i.e. above cost of production plus a reasonable profit for parts produced by the exporter or above the exporters' own purchase price and allowing for a reasonable profit. Prior to the verification visits, the exporters and importers of the REWS parts concerned were asked to supply appropriate documentary evidence proving their respective origin within the meaning of Article 24 of Council Regulation (EEC) No 2913/92 [1], as last amended by Regulation (EC) No 82/97 [2]. This evidence was verified on-the-spot and some corrections proved necessary.

(14) As a result of this examination, the Commission established that the value of parts originating in Japan and Singapore was found to be higher than 60 % of the total parts value of the assembled REWS during the investigation period.

(iii) *Article 13 (2) (b) — the '25 % value-added' test: 'in no case shall circumvention be considered to be taking place where the value-added to the parts brought in, during the assembly or completion operation, is greater than 25 % of the manufacturing cost'*

(15) The value-added to the parts was generally determined as the sum of labour costs and factory overheads incurred within the single economic entity, described above in recital 11, with respect to the REWS parts once they entered this single economic entity for actual assembly into Digi REWS. Selling, general and administrative expenses, profit and parts which allegedly acquired Community origin were in principle not considered to be value-added within the meaning of Article 13 (2) (b) of the Basic Regulation. The value-added thus established was then expressed as a percentage of the manufacturing cost which consists in essence of the value of all parts, based on the into-factory, at arm's length purchase prices of these parts (see recitals 11 to 14), plus the value-added to the parts during the assembly or completion operation.

(16) The average value-added thus established during the investigation period was found to be above the 25 % threshold set by Article 13 (2) (b) of the Basic Regulation. Consequently, the assembly operation could not be considered to constitute circumvention in the sense of Article 13 of the Basic Regulation. The Commission therefore decided to terminate the investigation without the extension of the anti-dumping measures in force.

(iv) *Conditions of Article 13 (2) (c)*

(17) As the investigation is to be terminated since the value-added of the assembly operation is found to be higher than 25 % it is not considered necessary to summarize the findings of the Commission with respect to Article 13 (2) (c).

D. TERMINATION OF THE INVESTIGATION

(18) In the light of the above findings and considerations, it appears appropriate that the present circumvention investigation be terminated without extension of the anti-dumping duties imposed. The registration of imports of REWS parts, introduced by Regulation (EC) No 1718/96, should therefore cease and that Regulation will be repealed.

(19) The Advisory Committee has been consulted and has raised no objection to termination.

(20) Interested parties were informed of the essential facts and considerations on the basis of which the Commission intended to terminate the investigation and have been given the opportunity to comment and their comments have been considered,

HAS ADOPTED THIS REGULATION:

Article 1

The investigation concerning the circumvention of the anti-dumping duties imposed, with respect to Teraoka Seiko Co., Ltd (Japan) and Teraoka Weigh-System PTE Ltd (Singapore), on certain electronic weighing scales originating in Japan or Singapore, by Regulations (EEC) No 993/93 and (EEC) No 2887/93 respectively, by imports of parts thereof subsequently used in the assembly of these weighing scales in the Community, initiated by Regulation (EC) No 1718/96, is hereby terminated.

[1] OJ No L 302, 19. 10. 1992, p. 1.
[2] OJ No L 17, 21. 1. 1997, p. 1.

Article 2

Regulation (EC) No 1718/96 is hereby repealed.

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 Brussels, 30 May 1997.

For the Commission
Leon BRITTAN
Vice-President