COMMISSION REGULATION (EC) No 985/97

of 30 May 1997

terminating the investigation concerning the circumvention of definitive anti-dumping measures imposed by Council Regulation (EC) No 993/93 on imports of certain retail electronic weighing scales originating in Japan by imports of the same product assembled in and/or transhipped through Indonesia, and ceasing registration of this product

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. PROCEDURE

(1) On 31 August 1996, by Regulation (EC) No 1717/96 [3], the Commission initiated an investigation into the alleged circumvention of the anti-dumping duties imposed by the Council Regulation (EEC) No 993/93 of 26 April 1993 [4] on imports of certain retail electronic weighing scales (hereinafter 'REWS') originating in Japan by imports of the same product assembled in and/or transhipped through Indonesia, and it directed customs authorities, pursuant to Article 14 (5) of Regulation (EC) No 384/96 (hereinafter the 'Basic Regulation'), to register imports from Indonesia of the product covered by this investigation.

(2) The investigation was initiated following a request, pursuant to Article 13 (3) of the Basic Regulation, lodged on behalf of the Community industry by the following companies:

— Bizerba GmbH & Co KG,
— Campesa SA,
— Dataprocess Industria SpA,
— Testut SA,
— Lutrana SA,
— GEC Avery Limited,
— Maatschappij van Berkel's Patent BV,
— Breveti van Berkel SpA.

(3) The request contained evidence, in accordance with Article 13 (3) of the Basic Regulation, that the anti-dumping duty on imports of REWS produced by TEC Corporation, Tokyo [5] (hereinafter 'TEC') and originating in Japan could be being circumvented by assembly operations in and/or transhipments through Indonesia of REWS subsequently exported to the Community. The evidence was considered to be sufficient to justify the initiation of an investigation.

(4) The product under consideration consists 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 (hereinafter referred to as 'REWS'). REWS are currently classified within CN code ex 8423 81 50.

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

(6) The following companies cooperated in the investigation and submitted satisfactory replies to the questionnaires:

— TEC Corporation (Japan) (exporter),
— PT TEC Indonesia (hereinafter TEC Indonesia) (assembler),
— TEC Elektronic GMBH (related importer),
— TEC UK Ltd (related importer),
— TEC France International SA (related importer),
— TEC Belgium SA (related importer).

Companies which requested to be heard within the time limits set by Regulation (EC) No 1717/96 were granted a hearing. The Commission advised the authorities of Japan, Singapore and Indonesia and held consultations with representatives of Indonesia.

The Indonesian company mentioned in the request, PT Kahar Duta Sarana (Jakarta, Indonesia), informed the Commission that it distributed REWS on the Indonesian market but that it dit not export REWS to the European Community. Consequently it did not reply to the questionnaire.

[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. 47.
[4] OJ No L 104, 29. 4. 1993, p. 4.

[5] By Regulation (EEC) No 993/93 of 26 April 1993 the Council imposed, *inter alia*, a definitive individual duty of 22,5 % on REWS produced by Tokyo Electric Co. Ltd (Tokyo, Japan). Tokyo Electric Co. Ltd and its domestic sales subsidiary TEC Electronics Corporation merged in October 1994 into the company 'TEC Corporation'.

B. INVESTIGATION

(7) The first sentence of Article 13 (1) of the Basic Regulation provides for anti-dumping duties in force to be extended to imports of finished products from third countries when circumvention of the measures is taking place. The investigation showed that the operation in Indonesia consisted of an assembly-operation of REWS. Article 13 (2) of the Basic Regulation specifies the conditions under which an assembly operation shall be considered to circumvent measures in force.

C. RESULTS OF THE INVESTIGATION

1. Nature of the circumvention practice

(8) The investigation has established that TEC Corporation (Japan) assembles REWS in Indonesia through its subsidiary, TEC Indonesia, some of those assembled REWS being exported to the Community. The assembly of REWS in Indonesia started in May 1994 on Batham Island (Indonesia), a free trade area located close to Singapore.

The Commission verified that TEC Indonesia, already established in July 1992, is fully owned by TEC Singapore Electronics Ltd (hereinafter TEC Singapore) which in turn is fully owned by TEC Corporation (Japan). It produces electronic equipment, among which REWS, under a licence agreement with TEC Singapore. TEC Indonesia was found to be, *de facto,* a workshop of TEC Singapore and both companies are consequently considered, for the purpose of the investigation, to constitute a single economic entity.

(9) TEC Indonesia procures all the parts used for the assembly of REWS from TEC Singapore. TEC Singapore buys parts from Japan (*inter alia,* from its mother company TEC Corporation), from Singapore and from third countries. In addition, TEC Singapore mounts printed circuit boards (PCBs) which are sold, among others, to TEC Indonesia.

The REWS, once assembled by TEC Indonesia, are sold to TEC Singapore which in its turn sells these to TEC Corporation (Japan). The latter takes care of the export administration (marketing and invoicing) as regards, *inter alia,* the Community. Physically, the REWS are shipped to the Community from Indonesia.

(10) The Indonesian company mentioned in the complaint (PT Kahar Duta Sarana) is the domestic distributor of TEC REWS in Indonesia. Sales of TEC REWS to PT Kahar Duta Sarana during the investigation period were limited in quantity and it was verified that these sales were only destined to the Indonesian market.

The major part of the TEC REWS exported to the Community during the investigation period were sold to the four related importers listed above (recital (6)). The remainder were sold to independent distributors in the Community.

2. Conditions of Article 13 (2) of the Basic Regulation

(i) *Start or substantial increase of operations*

(11) The assembly of TEC REWS by TEC Indonesia started in May 1994, i.e. after the initiation of the anti-dumping investigation in 1991 (notice of initiation published on 26 February 1991 [1]) that led to the imposition of the original measures in April 1993. It was found that no TEC REWS were assembled by TEC Indonesia prior to May 1994.

The export of the Indonesian assembled REWS to the Community appears to have grown from zero in May 1994 to 5 114 units during the investigation period.

(ii) *60 % rule on the total value of the parts of the assembled product*

(12) The value of parts has been calculated in respect of REWS assembled in Indonesia which were exported to the Community during the investigation period.

(13) All elements, material or immaterial (such as software) purchased by TEC Indonesia to be incorporated into the REWS have been considered as parts. Any element manufactured, assembled or developed by TEC Indonesia or TEC Singapore (as these companies are considered as a single economic entity) to be incorporated into the REWS has been considered as an individual part where its manufacture, assembly or development could not be reversed to any extent without significantly diminishing the value of that element.

It was found that it was feasible to dismantle all sub-assemblies, other than the load cells, to a prior level of assembly without significantly diminishing their value. The value added resulting from the assembly of these sub-assemblies has been accounted for under the 25 % value added test (see below).

(14) Printed circuit boards (PCBs) assembled by TEC Singapore and sold to TEC Indonesia for the assembly of REWS exported to the Community have been brought to the level of assembly imme-

[1] OJ No C 50, 26. 2. 1991, p. 3.

diately prior to the mounting of the stuffings (i.e. electronic components) into the bare board. Consequently the value of parts purchased by TEC Singapore for the assembly of these PCBs, has been considered for the calculation of the 60/40 % test, according to their respective origins.

The value of load cells (which it appeared impossible to disassemble without causing significant material damage to the components and consequent diminution in its value) has therefore been calculated as the cost of parts as brought in plus direct labour cost plus manufacturing overheads.

(15) The weighted average value of parts of Japanese origin incorporated into TEC REWS assembled by TEC Indonesia and sold to the Community during the investigation period was found to exceed the 60 % threshold.

(16) However, it has also been found that, in April 1996 (towards the end of the investigation period), TEC Japan transferred to Indonesia the production of an important part for the two models of REWS that are exported to the Community. This transfer led to a considerable reduction of the value of parts of Japanese origin incorporated in the REWS manufactured by TEC Indonesia which, at the end of the investigation period, was far below the 60 % threshold. In this respect, it should be noted that the value of parts of Japanese origin incorporated in each individual model was also less than 60 % at the end of the investigation period.

(17) Although, as a rule, the situation during the whole period of investigation is used as a basis for the decision on whether measures are to be taken, the Commission took into consideration in this case the very substantial decrease of the percentage of Japanese parts that occurred at the end of the investigation period, that the production of an important part for REWS had been transferred to Indonesia, and that this decrease in the percentage of Japanese parts used in REWS assembled by TEC Indonesia is likely to be maintained as it results from a change in the production pattern which it would be uneconomic to reverse.

(18) Under these particular circumstances, the Commission considers that the TEC assembly operation in Indonesia should be considered not to meet the parts value requirement of Article 13 (2) (b).

(iii) *25 % rule: value added*

(19) The weighted average value added brought in to the parts used for the assembly of the REWS exported to the Community by TEC Indonesia has been found to be far below the 25 % threshold of Article 13 (2) (b). Incidentally, the Commission also noted that the sum of the value of the parts of Indonesian origin, plus the value added to the parts brought into the assembly operation, plus the SG&A and the profit of TEC Indonesia, only represented a small part of the ex-factory (TEC Indonesia) price of REWS.

D. TERMINATION OF THE INVESTIGATION

(20) In the light of the above findings it appears appropriate to terminate the present investigation without extending the existing anti-dumping measures. The registration of imports of REWS from Indonesia introduced by Regulation (EC) No 1717/96 should therefore cease and that Regulation will be repealed.

(21) The Advisory Committee has been consulted and has raised no objections.

(22) Interested parties were informed of the essential facts and considerations on the basis of which the Commission intended to terminate the investigation and were 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 by Regulation (EC) No 993/93 on imports of certain retail electronic weighing scales originating in Japan by imports of the same product assembled in and/or transhipped through Indonesia initiated by Regulation (EC) No 1717/96 is hereby terminated.

Article 2

Regulation (EC) No 1717/96 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