COUNCIL REGULATION (EC) No 1900/2001

of 27 September 2001

terminating the anti-dumping review concerning the definitive anti-dumping measures imposed on imports of television camera systems originating in Japan by Council Regulation (EC) No 2042/2000

THE COUNCIL OF THE EUROPEAN UNION,

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], and in particular Article 11(3) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Previous investigations

(1) In April 1994, further to an anti-dumping investigation initiated in March 1993 (the original investigation), the Council, by Regulation (EC) No 1015/94 [2] (the original definitive Regulation), imposed a definitive anti-dumping duty on imports of television camera systems (TCS) originating in Japan. The original investigation covered the period from 1 July 1991 to 31 December 1992.

(2) In October 1997, further to an investigation (the anti-absorption investigation) pursuant to Article 12 of Council Regulation (EC) No 384/96 (the Basic Regulation), the Council, by Regulation (EC) No 1952/97 [3], raised the rates of the definitive anti-dumping duty for two companies concerned, namely for Sony Corporation and Ikegami Tsushinki & Co Ltd to 108,3 % and 200,3 % respectively.

(3) In April 1999 [4], and further to the request of the Community industry of TCS, the Commission initiated an expiry review according to Article 11(2) of the Basic Regulation (the expiry review). As a result of that review, it was concluded that the expiry of the definitive anti-dumping measures imposed would be likely to lead to a continuation or recurrence of dumping and injury. Therefore, the Council, by Regulation (EC) No 2042/2000 [5] (the present definitive Regulation) reimposed the definitive anti-dumping duties found in the original investigation and as amended by the anti-absorption investigation on imports of TCS originating in Japan.

2. Present investigation

(i) *Initiation*

(4) On 4 September 1999, the Japanese exporting producer of TCS, Hitachi Denshi Ltd (applicant), lodged a request for an interim review concerning the anti-dumping measures applicable to it, limited to the aspects of dumping pursuant to Article 11(3) of the Basic Regulation. The request alleged that the continued imposition of the anti-dumping duties on exports by the applicant to the Community was no longer necessary to counteract dumping since its normal value was substantially lower and its export prices substantially higher than those established in the original investigation leading to the existing measures.

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review, the Commission initiated an investigation [6] limited in scope to the examination of dumping as far as the applicant was concerned.

(ii) *Investigation*

(6) The Commission officially advised the representatives of the exporting country and the applicant of the initiation of the interim review and gave all parties directly concerned the opportunity to make their views known in writing and to request a hearing. The Commission also sent a questionnaire to the applicant and its related importer in the Community, to which both replied within the time limits set.

(7) The Commission sought and verified all information it deemed necessary for the determination of dumping and carried out an on-the-spot investigation at the premises of the applicant, Hitachi Denshi Ltd, Tokyo, Japan and the related importer Hitachi (Europe) GmbH, Rodgau, Germany.

(8) The investigation of dumping covered the period of 1 July 1998 to 31 December 1999 (investigation period or IP).

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 111, 30.4.1994, p. 106.
[3] OJ L 276, 9.10.1997, p. 20.
[4] Notice of initiation OJ C 119, 30.4.1999, p. 11.
[5] OJ L 244, 29.9.2000, p. 38. Regulation as last amended by Regulation (EC) No 198/2001 (OJ L 30, 1.2.2001, p. 1).
[6] Notice of initiation (OJ C 40, 12.2.2000, p. 5).

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(9) The product under investigation is the same as in the original investigation.

(10) The products under consideration are television camera systems (TCS) currently classified under CN codes ex 8525 30 90, ex 8537 10 91, ex 8537 10 99, ex 8529 90 81, ex 8529 90 88, ex 8543 89 95, ex 8528 21 14, ex 8528 21 16 and ex 8528 21 90 originating in Japan.

(11) As set out in the present definitive Regulation, TCS may consist of the following parts, imported either together or separately:

— a camera head with three or more sensors (12 mm or more charge-coupled pick-up devices) with more than 400 000 pixels each, which can be connected to a rear adapter, and having a specification of the signal to noise ratio of 55 dB or more at normal gain; either in one piece with the camera head and the adapter in one housing, or separate,

— a viewfinder (diagonal of 38 mm or more),

— a base station or camera control unit (CCU) connected to the camera by a cable,

— an operational control panel (OCP) for camera control (i.e. for colour adjustment lens opening or iris) of single cameras,

— a master control panel (MCP) or master set-up unit (MSU) with selected camera indication, for the overview and for adjustment of several remote cameras.

(12) Above TCS parts are hereinafter referred to as 'TCS components' or 'components'. Each component exists in different models.

(13) Products not covered by the definition are:

— lenses,

— video tape recorders,

— camera heads with the recording unit in the same, inseparable, housing,

— professional cameras which cannot be used for broadcast purposes,

— professional cameras listed in the Annex to the present definitive Regulation (TARIC additional code: 8786).

2. Like product

(14) It was found that there were no basic differences in the physical and technical characteristics and uses of the TCS manufactured by the applicant Japanese exporting producer and sold in the Community, and the product manufactured and sold by the applicant on the domestic market of the exporting country.

(15) Furthermore, the product concerned manufactured by the applicant and sold in the Community and the product manufactured and sold by the Community producers on the Community market use the same basic technology and both conform with worldwide applicable industry standards. These products also have the same applications and uses, they consequently have similar physical and technical characteristics, are interchangeable and compete with each other. Therefore, TCS manufactured by the applicant and sold domestically as well as in the Community and TCS manufactured and sold by the Community industry in the Community market are alike within the meaning of Article 1(4) of the Basic Regulation.

C. LIKELIHOOD OF CONTINUATION OF DUMPING

1. Preliminary remarks

(16) The investigation has shown that during the IP, the applicant realised only four export sales to the Community. The volume of TCS exported represented less than 10 % of the volume exported by it during the original IP and represented only approximately EUR 350 000 in value. Furthermore, all TCS were resold by the related importer to the same customer, a broadcast company (user) in the Community.

(17) Despite the fact that export sales volume was not representative and for the sake of completeness, the Commission carried out an investigation into the 'likelihood of continuation of dumping' (see recitals 18 to 46). However, and because of this unrepresentative volume, only the findings regarding the 'likelihood of recurrence of dumping' (see recitals 49 to 61) are decisive.

2. Normal value

(18) Normal value was established according to Article 2 of the Basic Regulation. Therefore, the Commission first established whether the applicant's total domestic sales of TCS were representative in comparison with its total export sales of the product concerned to the Community. In accordance with Article 2(2) of the Basic Regulation, and since the total domestic sales volume exceeded 5 % of the total export sales volume to the Community, the applicant's domestic sales of TCS were found to be representative.

(19) The Commission subsequently identified those models of TCS components sold domestically that were identical or directly comparable to the models sold for export to the Community. Three models sold by the applicant on its domestic market were found to be directly comparable to models sold for export to the Community. For these models, it was established that the domestic sales were sufficiently representative in accordance with Article 2(2) of the Basic Regulation, i.e. the total sales volume of the models concerned exceeded 5 % of the sales volume of the comparable model exported to the Community.

(20) An examination was also made as to whether the domestic sales of each TCS model could be regarded as having been made in the ordinary course of trade, by establishing the proportion of the profitable sales to independent customers of the model in question. Domestic sales were considered profitable when the net sales value was equal or above the calculated cost of production of each model concerned (profitable sales).

(21) As far as the net sales prices of TCS are concerned, the investigation revealed that TCS were sold as part of 'packages' which included also other products not subject to this investigation, like lenses, cables and tripods. Moreover, some of the products were produced by the applicant itself while others had been purchased from other suppliers. The applicant was not in a position to identify and deduct directly these components from the net sales prices so an allocation method had to be found. The applicant claimed that an allocation should be made to the product concerned on the basis of the cost of manufacturing of the individual components.

(22) The investigation revealed however that the company used internal price lists reflecting the values of the individual components. The prices indicated in these price lists (reference or target prices) were used as a basis for the negotiation and the final price of the package was established on the basis of these lists. It was therefore considered that the allocation on the basis of the price list was the most appropriate method to reflect the actual turnover of the individual components. Furthermore, the allocation method on the basis of cost of manufacture did not appear to be historically utilised by the company.

(23) As far as the cost of production is concerned, and in particular the selling, general and administrative costs (SG&A), in cases where these were allocated to the sales of the product concerned on the domestic market based on turnover, they had to be recalculated taking into consideration the corrected turnover. Moreover, a number of deficiencies were found in terms of wrong allocation methods and exclusion of certain costs directly linked to the sales of TCS. These deficiencies could however be corrected on the basis of the findings of the on-the-spot verification.

(24) The cost of production of each TCS model on the domestic market was compared to its net domestic sales price. In cases where profitable sales of each model represented 80 % or more of the total sales volume, the normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that model made during the IP, irrespective of whether all these sales were profitable or not. In cases where profitable sales represented less than 80 % but 10 % or more of the total sales volume, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only.

(25) In cases where the volume of profitable sales of any TCS model represented less than 10 % of the total sales volume, it was considered that this particular model was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(26) Wherever domestic prices of a particular model sold by the applicant could not be used, normal value had to be constructed instead of using domestic sales prices of other TCS producers. This approach was selected in view of the absence of any information concerning domestic sales prices of other TCS producers and due to the number of different models and variety of factors affecting them which would have implied numerous adjustments, which would have to be based on estimates.

(27) Consequently, normal value was constructed by adding to the manufacturing cost of the exported models, adjusted where necessary, a reasonable percentage for SG&A and a reasonable margin of profit.

(28) The actual domestic SG&A expenses of the applicant were considered reliable, due to the fact that the domestic sales volume was representative when compared to the volume of its export sales to the Community. The domestic profit margin was determined on the basis of the applicant's domestic sales made in the ordinary course of trade. In this regard it was established that the applicant's profitable sales represented more than 10 % of the total domestic sales volume of the product concerned. Therefore, both the applicant's own SG&A and profit were used for the purpose of constructing the normal value.

(29) Given the above, for one TCS model sold for export to the Community normal value was established on the basis of the domestic sales price of the comparable model sold on the domestic market in accordance with Article 2(2) of the Basic Regulation. For all other TCS models sold for export to the Community normal value was constructed in accordance with Article 2(3) of the Basic Regulation.

3. **Export price**

(30) All export sales during the IP were made to a related importer in the Community and the export price could therefore not be considered reliable. Consequently, the export price of TCS had to be constructed in accordance with Article 2(9) of the Basic Regulation, namely on the basis of the price at which the imported products were first resold to an independent buyer.

(31) In this regard, it was found that in some cases the resale prices reported for camera heads included the resale price of certain other parts or accessories of TCS, which were however not included in the sales price on the domestic market or were not even within the definition of the product concerned. The reported resale prices had therefore to be corrected accordingly.

(32) In order to construct the export price, and in accordance with Article 2(9) of the Basic Regulation, the Commission took as a basis the invoice value as charged by the related importer to the independent customer, duly adjusted by all costs incurred between importation and resale of the product concerned, as well as the inland freight, handling and insurance cost incurred on the domestic market of the exporting country. Furthermore, the related importer's own margin for SG&A and a reasonable profit margin were deducted from the adjusted resale price. As regards, the SG&A, it was found that travel expenses were not included and had thus to be added to the reported costs. As regards the profit margin and in the absence of any other information available, the Commission considered that a profit margin of 5 % was reasonable for the function performed by the related importer. The same profit margin was used in the original investigation for the purpose of constructing the export price.

(33) The applicant objected to the methodology used by the Commission and claimed that SG&A should have been allocated to the turnover of TCS as booked in the accounts of the related importer, i.e. excluding the anti-dumping duty. This had to be rejected. In accordance with the Basic Regulation, the export price was constructed on the basis of the prices paid or payable, invoiced to the customer and paid by those in the Community. SG&A were consistently allocated on these prices. The applicant could not indicate any valid reason which would have justified a departure from this methodology.

(34) Pursuant to Article 11(10) of the Basic Regulation, where it is decided to construct the export price in accordance to Article 2(9) of the Basic Regulation, the constructed export price should be calculated with no deduction for the amount of anti-dumping duties paid when conclusive evidence was provided that the duty is duly reflected in the resale prices. In order to establish whether the anti-dumping duty was duly reflected in the resale prices, the Commission took into account the two following facts.

(35) The evidence submitted which should have demonstrated that the anti-dumping duty had been paid during the investigation period did not show whether the full amount of the duty was indeed paid during the IP. Although the customs' documents provided showed that a certain amount of anti-dumping duty was paid during the IP, the investigation revealed that the amount of duty paid did not cover the volume of units found to have been imported and resold during the IP.

(36) After disclosure, the applicant contested these findings and claimed that the anti-dumping duty was fully reflected in the resale prices in the Community. This claim was however not supported by any evidence and had to be rejected for the reasons detailed in recital 37.

(37) In order to determine whether the anti-dumping duty was duly reflected in the resale prices, the Commission had to establish whether these prices sufficiently increased in comparison to the original IP, i.e. no dumping is taking place anymore. Due to the fact that the TCS technology has substantially developed since the original IP seven years ago, direct successor models of TCS components produced and sold during the original IP could not be identified. Therefore, in order to determine whether the anti-dumping duty applicable was reflected in the resale prices or not, the Commission compared the adjusted resale price of the related importer to a target price per TCS model exported which was based on the duly adjusted normal value established for these models. It was found that on an overall basis the resale prices were substantially below the calculated target price.

(38) Consequently, in accordance with Article 11(10) the amount of the anti-dumping duty had to be deducted from the constructed export price. It should however be noted that even no deduction or only a partial deduction of the anti-dumping duty would not have changed the conclusion that dumping was still taking place, albeit at a much lower level. In any case and more importantly that would not have changed the overall outcome of the present review in particular in view of the findings as regards the likelihood of recurrence of dumping should the measures be repealed (see recitals 49 to 57).

4. **Comparison**

(39) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences in transportation, insurance, handling, loading and ancillary cost as well as credit cost and warranties, affecting price comparability in accordance to Article 2(10) of the Basic Regulation.

(i) *Level of trade*

(40) The applicant claimed an adjustment for differences in the level of trade on the basis that the reconstructed export price would be at a different level of trade from the normal value. In support of this argument the applicant claimed that, when constructing the export price according to Article 2(10) of the Basic Regulation, certain costs incurred by the related importer in the Community were deducted from the resale price charged to the first independent customer. For that reason and given that on the domestic market all sales were made on the same level of trade, and that therefore an adjustment could not be quantified otherwise, the applicant claimed that in order to obtain a normal value at a comparable level of trade, the expenses incurred by the applicant's sales branches on the domestic market for the same functions performed should be deducted from the normal value, pursuant to Article 2(10)(d) of the Basic Regulation.

(41) No material difference in the levels of trade between the domestic and the Community market was found. In both markets the product was resold to the same group of customers, namely end-users. The investigation revealed that the same pricing policy was used in the export and domestic market and that no information or evidence was submitted indicating that a distinction was made between the domestic and export market when deciding on prices. The fact that certain costs were deducted to reconstruct the export price does not, per se, warrant a similar deduction from the normal value. The fact that an exporter incurs certain costs on the domestic market due to its distribution structure which are also incurred at the export level does not automatically entitle the exporter to an adjustment. In conclusion, the applicant could not demonstrate that the price comparability was affected by consistent and distinct differences in functions and prices of the seller for the different levels of trade in the domestic market and in the exporting country.

(42) Notwithstanding this, the Commission services also carried out a function analysis and it was found that the differences, if any, of the functions performed by the applicant's domestic sales branches and those of the related importer were negligible. In this context, Hitachi submitted contradicting and misleading information, since in contrast to what was reported, only a minor part of Hitachi's sales branches were actually involved in the sales of TCS during the IP.

(43) Although the applicant contested the findings, it did not submit any new information which could have altered the Commission's conclusions in this respect.

(44) Consequently the claim for an adjustment for differences in the level of trade had to be rejected.

(ii) *Sponsor fee*

(45) In certain cases, the applicant sold TCS on the domestic market under the condition that it would in return purchase advertising space from the customer concerned. It was claimed to adjust the normal value accordingly by the amount paid to the customer for the purchase of advertising space, pursuant to Article 2(10)(k) of the Basic Regulation. This had to be rejected, given that the applicant could not show whether and to what extent the sponsor fee paid was related to sales of TCS and how this affected price comparability as required by the Basic Regulation. In particular, it could not be demonstrated that customers consistently paid different prices on the domestic market because of the difference claimed.

5. **Dumping margin**

(46) For the purpose of calculating the dumping margin and in accordance with Article 11(9) of the Basic Regulation, the Commission applied the same methodology as in the original investigation. According to Article 2(11) of the Basic Regulation, the ex-factory weighted average normal value per model was compared with the ex-factory weighted average export price for each corresponding TCS model at the same level of trade.

(47) The comparison showed the existence of dumping. The dumping margin expressed as a percentage of the cif import price at the Community border is:

Hitachi Denshi Ltd: 65,8 %.

(48) It was therefore concluded that significant dumping was found to exist albeit in small quantities.

D. **LIKELIHOOD OF RECURRENCE OF DUMPING**

(49) The likelihood of recurrence of dumping in significant quantities, should the measures in question be removed, was examined.

(50) In this regard, the request was based on the grounds that due to a change in TCS technologies from analogue to digital technology, the cost and price structure of TCS has significantly changed in comparison to those prevailing during the original IP. The applicant claimed that as a consequence, the cost of production and the constructed normal value had significantly decreased. It was further claimed that since the changes have been of a structural nature, the current situation is likely to be lasting.

(51) The investigation did not confirm the above allegations. On the contrary, it was found that there was a likelihood of recurrence of dumping should the anti-dumping measures be repealed. This conclusion was based on the findings of:

— significant spare capacity,

— normal values which remained at least at the same level as in the original investigation and in some cases they even increased,

— likely decreases of export prices,

— the applicant's existing sales infrastructure in the Community.

(i) *The applicant has significant spare capacity*

(52) As far as production capacity and capacity utilisation is concerned, the investigation showed that the applicant almost halved its production volume of TCS in comparison to the original IP, while the capacity remained approximately the same. Production capacity during the current IP was thus only used at half. Production volume and capacity use remained stable at these low levels since then; i.e. after the imposition of the definitive anti-dumping duty. In this context, it should be noted that the applicant was able to compensate part of its lost exports to the Community by exports to other third countries.

(53) Further to disclosure, the applicant claimed that the assessment of the Commission as regards production capacity and utilisation did not take into account that the available assembly lines are also used for the production of other video or broadcast products. However, this argument was contradictory to what was explained in the reply to the questionnaire and during the on-the-spot verification visit, i.e. that the production capacity as reported was calculated on the basis of the maximum of camera heads produced over a five-year period, not taking into consideration other products. Other TCS elements were reported as a multiple or fraction thereof. The argument of the applicant had therefore to be rejected.

(ii) *The normal values remained at least at the same level as in the original investigation and in some cases they even increased*

(54) As already mentioned, the TCS models produced and sold during the original IP were technically different from those produced and sold during the current IP. A direct comparison between those models without an important number of adjustments taking into account their differences did therefore not appear to be possible. In particular as regards camera heads, by far the most important and complex component of a TCS no direct successor models could be identified. In order to establish the development of the normal value between the original and current investigation, the Commission had therefore to rely on a comparison of successor models of other components of the TCS such as the camera control unit, the operational control panel or the viewfinder, which was considered as an appropriate basis since they constitute still a fairly representative part of a TCS, i.e. approximately up to 50 % of the value of a TCS. The comparison of the normal values as established in the relevant investigations revealed that the normal values remained basically the same or even increased in the current investigation period.

(55) Furthermore and since the normal value in both investigations was constructed on the basis of the cost of production (with exception of one model), the Commission analysed the unit costs of certain TCS components which showed that the unit cost for the different models produced and sold during the current IP were tendentiously higher than the unit cost for the models produced and sold during the original IP. A structural difference in the cost of production resulting in a lower normal value, as claimed by the applicant, could therefore not be established.

(iii) *Export prices remain unlikely at their current level*

(56) With regard to the export price side it should be noted that, provided that the anti-dumping duty is properly paid it accounts for roughly one third of resale price charged in the Community. No convincing reasons have been found that the current price level will be maintained should the anti-dumping measures be repealed. Even if the anti-dumping duty were not to be deducted as a cost in the context of the dumping determination (see recitals 18 to 47), a significant dumping margin would reappear should the measures be repealed because it can reasonably be expected that the applicant would lower its resale prices in order to gain higher sales volumes on the Community market. Current export sales to the Community only represent a fraction of the

original sales and were only made to one customer and it should be noted that the applicant has significant spare capacities. Thus, there is no evidence to suggest that the current level of export prices is sustainable. Given that the applicant was only able to sell during a considerable time-span an insignificant quantity and only to one customer, it can only be concluded that the applicant was not in a position to re-establish itself in the Community market with the export prices shown in these few transactions.

(iv) *The applicant has the infrastructure in the Community to raise its sales*

(57) The infrastructure to import and distribute TCS into the Community is available to the applicant. Two subsidiaries are located in the Community, which both dealt with the imports and resales of TCS on the Community market during the original IP. While, one of the subsidiaries ceased importing TCS from Japan after the imposition of definitive measures, there is no reason to believe it could not easily restart such activities.

(v) *Conclusions*

(58) It follows from the above that the alleged structural and lasting change in circumstances leading to a decrease of the dumping margin could not be established. Furthermore, the applicant has continued to import at dumped prices (albeit in insignificant quantities) and also has the potential to increase its production and exports to the Community at significantly dumped prices.

(59) Considering the above, it is most likely that, should the anti-dumping measures be removed or reduced, a significantly increased quantity of TCS will be exported to the Community. The export prices would in all likelihood be at or even above the level found in the previous and current investigation and thus there would be substantial dumping at similar levels to those found in the original and the current investigation.

(60) Therefore, it was concluded that according to Article 11(3) of the Basic Regulation the need for continued imposition of measures at the existing level as far as the applicant is concerned was warranted.

E. **INJURY AND COMMUNITY INTEREST**

(61) Given that the request for a review by the applicant in the current investigation was limited to an examination and possible revision of the dumping margin applicable to it under Article 11(3) of the Basic Regulation, it was not necessary to carry out an examination of injury or Community interest.

F. **CONCLUSIONS**

(62) On the basis of the above, it is concluded that the interim review should be terminated and the anti-dumping measures imposed by Regulation (EC) No 2024/2000 on imports of the product concerned originating in Japan should remain in force, without changing the level of the measures for the applicant,

HAS ADOPTED THIS REGULATION:

Article 1

The review of anti-dumping measures concerning the imports of television camera systems, currently classifiable under CN codes ex 8525 30 90, ex 8537 10 91, ex 8537 10 99, ex 8529 90 81, ex 8529 90 88, ex 8543 89 95, ex 8528 21 14, ex 8528 21 16 and ex 8528 21 90 originating in Japan, is hereby terminated.

Article 2

This Regulation shall enter into force on the day following that 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 Brussels, 27 September 2001.

For the Council

The President

M. VERWILGHEN