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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1754/2004

of 4 October 2004

amending Regulation (EC) No 176/2000 amending Regulation (EC) No 1015/94 imposing a definitive anti-dumping duty on imports of television camera systems originating in Japan

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] (the 'basic Regulation'),

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

Whereas:

A. **PREVIOUS PROCEDURE**

(1) The Council, by Regulation (EC) No 1015/94 [2], imposed a definitive anti-dumping duty on imports of television camera systems ('TCS') originating in Japan. The Council subsequently confirmed the definitive anti-dumping duty by Regulation (EC) No 2042/2000 [3], in accordance with Article 11(2) of the basic Regulation.

(2) In Article 1(3)(e) of Regulation (EC) No 1015/94 and Regulation (EC) No 2042/2000 ('the definitive Regulations'), the Council specifically excluded from the scope of the anti-dumping duty camera systems which are listed in the Annex to the definitive Regulations ('the Annex'), representing high-end professional camera systems technically falling within the product definition under Article 1(2) of the definitive Regulations, but which cannot be regarded as television camera systems.

(3) One exporting producer, namely Ikegami Tsushinki Co. Ltd. ('Ikegami'), requested by letter, received by the Commission on 15 April 1999, to add certain new models of professional camera systems including their accessories to the Annex and thus to exempt them from the scope of the anti-dumping duties. In January 2000, the Council by Regulation (EC) No 176/2000 [4] (the 'amending Regulation') granted this request and amended Regulation (EC) No 1015/94 accordingly. In accordance with Article 2 of Regulation (EC) No 176/2000, this amendment entered into force the day following that of its publication in the *Official Journal of the European Communities*, i.e. 28 January 2000.

B. **PRESENT EXAMINATION**

(4) The Community Institutions received information that it would be appropriate to apply the amending Regulation, in so far as it amended the Annex to Regulation (EC) No 1015/94 retroactively.

(5) Indeed, one exporting producer, namely Ikegami had to pay the definitive anti-dumping duty for all exports of its professional camera systems subject to the amending Regulation but made prior to the date of entry into force of this Regulation, i.e. prior to 28 January 2000, although these models have subsequently been exempted from the duty in accordance with Article 1(3)(e) of the definitive Regulations.

(6) In this context, the exporting producer concerned referred also to the prior practice of the Community Institutions, according to which an amendment of the Annex was generally applied retroactively to the date of the request whenever appropriate. Therefore, the exporting producer concerned claimed that the amendment of the Annex pursuant to the amending Regulation should be applied from the date of receipt by the Commission of the relevant request for exemption from the definitive duty, i.e. 15 April 1999 in accordance with the consistent practice of the Community Institutions.

(7) The Commission examined whether the retroactive application of the amending Regulation would indeed be appropriate. In this respect it was first considered that all professional camera models mentioned in recital (5) have indeed been qualified as professional camera systems. In accordance with Article 1(3)(e) of the definitive Regulations these cameras are exempted from the definitive anti-dumping duty by virtue of their inclusion in the Annex.

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[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

[2] OJ L 111, 30.4.1994, p. 106. Regulation as last amended by Regulation (EC) No 176/2000 (OJ L 22, 27.1.2000, p. 29).

[3] OJ L 244, 29.9.2000, p. 38. Regulation as last amended by Regulation (EC) No 825/2004 (OJ L 127, 29.4.2004, p. 12).

[4] OJ L 22, 27.1.2000, p. 29.

(8) It is noted that a professional camera system falling within Article 1(3)(e) of the definitive Regulations is exempted, from the date it has been explicitly included in the Annex by way of amending the definitive Regulations, from the definitive duty. In this context, it is assumed that exporting producers know in advance, i.e. prior to any first exportation into the Community, their cycles of production and whether their new models should qualify as professional cameras within the meaning of Article 1(3)(e), and consequently whether they should be included in the Annex and an application to that effect be made.

(9) Notwithstanding the above, it was not in the Community Institutions' intention that the definitive anti-dumping duty be applicable to imports of professional camera systems which are eventually found to be exemptible from this duty by the application of Article 1(3)(e). Therefore, where appropriate, the necessity for a retroactive application of a Regulation exempting certain professional camera models has been recognised from the date of the receipt of such a request, which allowed the Community institutions to properly monitor the accuracy of the classifications. This was the case, in particular, where professional camera models have been imported in the Community prior to the entering into force of the Regulation amending the Annex but after the date of the exemption request.

(10) In the present case, it was shown that Ikegami imported certain professional camera systems, prior to the publication of the amending Regulation, but after it lodged its exemption request, which have subsequently been exempted by the application of Article 1(3)(e) of the definitive Regulations. The amending Regulation entered into force the day after its publication, i.e. on 28 January 2000. However, as mentioned above, it has not been in the Community Institutions' intention that the definitive anti-dumping duties apply to camera systems which are found to be exemptible after a request has been lodged to that effect with the Commission. In fact, the Commission, immediately after the imposition of the definitive measures and the creation of the first Annex in 1994, actually informed the exporting producers concerned that it is intended to reimburse definitive anti-dumping duties paid for imports of professional camera systems eventually found to be falling under Article 1(3)(e) between a fully documented request for exemption and the corresponding publication of the amended Annex. In this context, it was considered that the retroactive application of the amending Regulation, in so far as it amended the Annex to Regulation (EC) No 1015/94 would bring the current situation in line with the consistent practice of the Community Institutions.

(11) The Community industry and Ikegami were informed accordingly and granted a time period to comment on the Commission services determination. None of the interested parties objected to the above conclusions.

C. **CONCLUSION**

(12) Considering the above, the Community Institutions concluded that the retroactive application of the Annex as amended by the amending Regulation is warranted.

(13) Given the above the Annex as amended by Regulation (EC) No 176/2000 should apply to imports of the following professional camera models produced and exported to the European Community by Ikegami from the date of receipt by the Commission of the relevant request for exemption from the definitive anti-dumping duty for these models, i.e. 15 April 1999:

— camera head HC-400

— camera head HC-400W

— viewfinder VF15-46

— operational control unit RCU-390

— camera adapter CA-400

— camera control unit MA-200A,

HAS ADOPTED THIS REGULATION:

Article 1

Article 2 of Regulation (EC) No 176/2000 shall be replaced by the following:

'*Article 2*

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

2. For the products of Ikegami Tsushinki Co. Ltd. listed below, this Regulation shall apply from 15 April 1999:

— camera head HC-400

— camera head HC-400W

— viewfinder VF15-46

— operational control unit RCU-390

— camera adapter CA-400

— camera control unit MA-200A'.

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 4 October 2004.

For the Council
The President
A. J. DE GEUS