

COUNCIL REGULATION (EC) No 2937/95

of 20 December 1995

amending Regulation (EEC) No 2887/93 by imposing an additional anti-dumping duty on imports of certain electronic weighing scales originating in Singapore

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community⁽¹⁾, and in particular Article 23 thereof,

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⁽²⁾, and in particular Articles 12, 13 (11) and 14 thereof,

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

Whereas :

A. PROCEDURE

- (1) By Council Regulation (EEC) No 2887/93⁽³⁾, a definitive anti-dumping duty of 10,8 % was imposed on imports of certain electronic weighing scales originating in Singapore.
- (2) The Commission subsequently received a complaint alleging that the anti-dumping duty had been borne, wholly or partly, by the sole known exporter, Teraoka Weigh System PTE Ltd. The evidence for this allegation consisted of price lists of importers selling the product in question which, according to the complainant, demonstrated that, since the imposition of the anti-dumping duty, the resale prices of most models have remained unchanged or have actually declined and that therefore the anti-dumping duty has been borne by the exporter concerned.
- (3) The complaint was lodged by the Community producers which had also lodged the initial anti-dumping complaint.
- (4) Since the complaint contained evidence of absorption of anti-dumping duty by the exporter, the

Commission announced the initiation of an investigation as provided for in Article 13 (11) of Regulation (EEC) No 2423/88 (hereafter referred to as 'the basic Regulation'), by a notice published in the *Official Journal of the European Communities*⁽⁴⁾.

- (5) The Commission officially advised the exporter and importers known to be concerned and gave interested parties the opportunity to make their views known in writing.
- (6) Replies to the Commission's questionnaire were received from the exporter subject to the investigation and from six unrelated importers.
- (7) The investigation into the alleged absorption of the anti-dumping duty by the exporter covered the original investigation period, 1 January to 31 December 1991 (hereinafter referred to as the 'reference period'), which had been taken into account for calculation of the anti-dumping duty, and the period following the imposition of the definitive anti-dumping duty and prior to the initiation of the present investigation, i.e. from 23 October 1993 to 30 April 1994 (hereinafter referred to as the 'investigation period').

B. PRODUCT

- (8) The product under consideration is 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) falling within CN Code 8423 81 50 (Taric Code 8423 81 50* 10).

C. ABSORPTION OF THE ANTI-DUMPING DUTY BY THE EXPORTER

I. Existence of absorption of duty

- (9) In order to establish the existence of absorption, the Commission examined whether, following the imposition of the definitive anti-dumping duty, the import prices free-at-Community-frontier (before payment of customs and anti-dumping duty) had fallen. Import prices were determined on the basis

⁽¹⁾ OJ No L 349, 31. 12. 1994, p. 1. Regulation as last amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).

⁽²⁾ OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).

⁽³⁾ OJ No L 263, 22. 10. 1993, p. 1.

⁽⁴⁾ OJ No C 129, 11. 5. 1994, p. 6.

of the prices actually paid or payable for the product sold for export to the Community, since all export sales were made directly to independent importers in the Community. The Commission based its findings on the export prices provided by the exporter which replied to the Commission's questionnaire.

- (10) One model was, as far as production in Singapore is concerned, a completely new model which was not exported to the Community during the reference period. This model has therefore been excluded from the calculations.
- (11) In the reference period imports were mainly invoiced in Yen, whereas the imports in the investigation period were made in US dollars. The exporter started to invoice in US dollars around the time of imposition of the definitive duty. For the price comparison, import prices have been converted into Singapore dollars (which was the currency used for calculating the dumping margin), on the basis of the exchange rates prevailing during the respective periods.
- (12) The information on export prices provided by the exporter clearly shows that, following the imposition of the definitive duty, export prices fell considerably for most models.
- (13) Therefore, by reducing its prices for export to the Community after imposition of the definitive anti-dumping duty, the exporter of electronic weighing scales originating in Singapore has absorbed completely or partially the effect of the anti-dumping duty.

II. Level of absorption of the duty

- (14) The level of absorption of the anti-dumping duty has been calculated by comparing the difference between the weighted average free-at-Community-frontier price per model in the reference period and the weighted average free-at-Community-frontier price per model in the investigation period.
- (15) In order to arrive at the level of this absorption, the Commission calculated the amount of absorption per model which equals the amount of reduction in the export price, plus the duty amount initially intended for collection (equal to the dumping margin) during the reference period, minus the amount of anti-dumping duty actually paid on the reduced export price during the investigation period.
- (16) In those instances where the reduction in the export price was greater than the amount of duty initially intended (dumping margin), the amount borne by the exporter has been capped so as not to exceed that amount.
- (17) The total amount of absorption is 4,6 % when expressed as a percentage of the total free-at-

Community-frontier price for all models exported, which represents the amount of the additional anti-dumping duty required.

D. OTHER CONSIDERATIONS

- (18) The Commission has no information to suggest that the normal value, as established for the reference period, has altered. It can therefore be concluded that the dumping margin has increased commensurate with the reduction in export prices and corresponds consequently at least to the sum of the original duty and of the amount borne.

E. COMMENTS RECEIVED

- (19) The Singapore exporter claimed that, in investigating the allegation of absorption, the Commission should make a comparison of prices in a Community currency and not in a third country currency, because a decrease in prices expressed in a third country currency would not necessarily mean that a corresponding decrease in prices takes place on the Community market.

In assessing the allegation of absorption, the Commission had to compare the Singapore exporter's prices to the first independent customer during the reference period with those of the investigation period in order to establish whether the exporter had borne the duty. It should be recalled that the exporter's prices were expressed in yen in the reference period and in US dollars in the investigation period. In order to solve the problem of comparing export prices in the different currencies, the Commission converted them into the currency of the exporter, Singapore dollars, which was also, as stated above, the currency originally used for calculating the dumping margin. There is no reason which would make the comparison more appropriate in another currency than in Singapore dollars.

As to the argument that a decrease in prices in a foreign currency would not necessarily mean a decrease of prices on the Community market involving an absorption of the duty, the Commission considers this argument to have no foundation. Article 13 (11) (a) of the basic Regulation makes it clear that, in establishing the existence of absorption of an anti-dumping duty, it is the behaviour of the exporter which must be examined and that if, as in this case, the exporter's price has fallen, there is evidence (rebuttable) that the exporter has borne the duty.

- (20) The Singapore exporter further alleged that, as the Commission took into account different physical characteristics for the various versions of the model during the reference period, and as separate dumping margins were thus established for these

different versions, the same approach should be taken during this investigation. Additionally, it was argued that the importers tended to procure the simplest versions after the imposition of duties and that this was the reason for the decline in the exporter's prices.

On the issue of physical characteristics, it was not always possible to compare exactly each version of the same model between the reference period and the investigation period as these versions and their marketing patterns have changed over time. As regards the allegation that the importers tended to procure the simplest versions since the imposition of the anti-dumping duty, it should be pointed out that 30 % of the sales (65 % in terms of value of total exports) during the investigation period were accounted for by the most sophisticated and expensive model, which had not been exported during the reference period. Furthermore, for one model, the exporter ceased to export one version which was less expensive than the versions of the model imported during the investigation period. In any event, the claim that importers had shifted towards cheaper versions could not reliably be confirmed in view of the surge of imports immediately prior to the imposition of provisional duties, as explained in recital 27.

Thus, the investigation showed that the situation was more complex than alleged by the exporter and that, while there existed some factors which might explain a downward movement in prices, other factors which were also present clearly exerted an upward pressure on prices. In these circumstances, it appeared fairer and more appropriate to make a comparison on a model-by-model basis. The Commission calculated the weighted average prices for each model, rather than individual versions, during the two abovementioned periods, which is considered to be a reasonable approach in the context of an investigation under Article 13 (11) of the basic Regulation, the purpose of which is not to establish a dumping margin, but to determine any change in the exporter's prices.

Moreover, it should be recalled that a single anti-dumping duty was then established and imposed on all models and versions of the like product. As this investigation is concerned with whether or not that duty has been borne by the exporter, there is no compelling reason for a breakdown of price comparison identical to the breakdown of normal values established during the reference period.

- (21) It was further claimed that the allowances made for physical differences in establishing the export price in the reference period should be adjusted for the further reason that the cost of the same model could vary according to its destination because of

different options requested by customers in different segments of the Community market. It was then argued again that importers tended to procure the simplest, and therefore less expensive versions after the imposition of duties.

Apart from the difficulty to distinguish this argument from the one dealt with and rejected in recital 20, the relevance of considering different market segments within the Community and allegedly different cost structures of the various models of the like product exported there in the context of an investigation under Article 13 (11) of the basic Regulation is unclear. Indeed, the aim of such an investigation is not to verify and compare the cost structure of the models under consideration at different points in time, but to establish whether or not the Singapore exporter has decreased its export prices between the two periods in question.

- (22) The Singapore exporter found it unjustified that the Commission in its comparison included a model not exported during the reference period, even though it was admitted that the model belonged to the same range as the model used in the comparison. It was also argued that there was a major difference between the two models.

The Commission considered that, given its characteristics, this model was a replacement of a pre-existing model in the same range (even if it bears a different social number). This was confirmed during verification visits at the premises of the importers. It was therefore considered appropriate to include this model in the comparison.

F. CONCLUSION

- (23) On the basis of the above findings, the Council concludes that the exporter has effectively borne a part of the anti-dumping duty through a corresponding reduction in its export price and that its dumping margin is not lower than the sum of the original duty and the amount borne.

G. COMMUNITY INTEREST

- (24) The aim of an additional anti-dumping duty as provided for by Article 13 (11) of the basic Regulation is to compensate for the amount of anti-dumping duty borne by the exporter.
- (25) The Commission has no reason to believe that its findings on Community interest, as set out in recitals 53 to 54 of Regulation (EEC) No 1103/93 (1)

(1) OJ No L 112, 6. 5. 1993, p. 20.

imposing a provisional anti-dumping duty, confirmed by recitals 18 to 19 of Regulation (EEC) No 2887/93 imposing a definitive anti-dumping duty, on imports of the product in question, warrant modification.

- (26) Moreover, given that the absorption of anti-dumping duty by the exporter cancels the effect of the anti-dumping duty and therefore prevents the removal of the injury caused by dumping and that the imposition of the anti-dumping duty was considered in the Community's interest, a measure aimed at restoring the effect of the said duty is therefore in the interest of the Community.
- (27) The Singapore exporter pointed out that there has been a substantial decrease of its exports to the Community from 4 543 units, in the calendar year 1991 to 963 units during the seven month investigation period, and has questioned whether it is in the Community interest to impose an additional duty given the decrease of its share of the Community market.

However, as an anti-dumping duty was imposed on the strength of a finding of injurious dumping, it is obvious that the volume of exports in 1991 had been achieved through dumping. Consequently, it was to be expected that such a volume would decrease following the imposition of the anti-dumping duty even though the duty was partially absorbed by the exporter. This fact alone, therefore, is not a valid reason for considering an additional duty to be inappropriate in circumstances where the original duty has been found to have been totally or partially borne by the exporter. Indeed, the fact that the anti-dumping duty may have had some effect does not exclude *ipso facto* that absorption has taken place and reduced, if not entirely annulled, the impact of that duty.

Moreover, in addressing this argument, it should be pointed out that huge imports of the exporter's products took place before the imposition of the provisional anti-dumping duty. As a consequence, the importers had enough stock to cover their sales during the investigation period without having to import a number remotely equivalent to the actual sales. Indeed, at the end of the reference period there was still a considerable number of scales in stock. It is therefore considered, for the above reasons, that it is appropriate to impose an additional anti-dumping duty.

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

Done at Brussels, 20 December 1995.

H. ADDITIONAL ANTI-DUMPING DUTY

- (28) In order to compensate for the level of absorption and to restore the effect of the original duty, an additional duty of 4,6 % is required to bring the current export price up to the level envisaged by Regulation (EEC) No 2887/93.
- (29) The rate of the anti-dumping duty currently in force is 10,8 % of the net, free-at-Community-frontier price. An additional duty of 4,6 % should be imposed to compensate for the level of absorption bringing the total anti-dumping duty to a rate of 15,4 %.
- (30) For practical reasons, the imposition of this additional duty takes the form of an amendment to Regulation (EEC) No 2887/93. This does not constitute a modification of the anti-dumping duty within the meaning of Article 15 (1) of the basic Regulation and, therefore, the expiry date of the anti-dumping duty, including the additional duty, remains unchanged, subject to the relevant provisions of Regulation (EC) No 3283/94,

HAS ADOPTED THIS REGULATION :

Article 1

Article 1 (2) (b) of Regulation (EEC) No 2887/93 shall be replaced by the following :

'b) Singapore

Products manufactured by :

- Teraoka Weigh System PTE Ltd, 15,4 %
Singapore :
(Taric additional code 8703)
- All others : 31,0 %
(Taric additional code 8704)'

Article 2

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

For the Council

The President

J. BORRELL FONTELLES