

## COMMISSION DECISION

of 16 June 1993

terminating the review of anti-dumping measures adopted under Council Regulation (EEC) 1698/85 imposing a definitive anti-dumping duty on imports of electronic typewriters originating in Japan

(93/376/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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<sup>(1)</sup>, and in particular Articles 15 and 9 thereof,

After consultation within the Advisory Committee as provided for by the above Regulation,

Whereas :

## A. PROCEDURE

- (1) In 1985 a definitive anti-dumping duty was imposed on imports of certain electronic typewriters (ETWs) originating in Japan and falling into CN-codes ex 8469 10 00, ex 8469 21 00, ex 8469 29 00 and ex 8470 90 00 by Council Regulation (EEC) No 1698/85<sup>(2)</sup>, as last amended by Regulation (EEC) No 486/88<sup>(3)</sup>. By Regulation (EEC) No 1022/88<sup>(4)</sup>, as last amended by Regulation (EEC) No 2329/88<sup>(5)</sup>, the Council, in order to prevent circumvention of those measures, extended the above anti-dumping duty to cover certain ETWs assembled in the Community by some of the Japanese producers concerned. Subsequently, by Decisions 88/300/EEC<sup>(6)</sup>, 88/387/EEC<sup>(7)</sup> and 88/424/EEC<sup>(8)</sup>, the Commission accepted undertakings from Kyushu Matsushita (UK) Ltd., Canon Bretagne SA und Shapr Manufacturing (UK) Ltd. in that regard.
- (2) In December 1990, the Commission, in accordance with Article 15 (3) of Regulation (EEC) No 2423/88

(hereafter referred to as the 'basic Regulation'), announced the initiation of an anti-dumping review concerning imports into the Community of certain ETWs originating in Japan by a notice published in the *Official Journal of the European Communities*<sup>(9)</sup> after a request for review had been received from the Committee of European Electronic Typewriter Manufacturers ('CETMA') on behalf of :

- Ing. C. Olivetti & C. SpA, Ivrea, Italy,
- Rank Xerox Limited, Marlow, United Kingdom, and
- Triumph-Adler Aktiengesellschaft, Nuremberg, Germany,

allegedly representing a major proportion of the total ETW-Community production.

An additional notice concerning exports by Nakajima All Co. Ltd. ('Nakajima') was published in the *Official Journal of the European Communities*<sup>(10)</sup>.

- (3) The Commission officially advised the producers in the exporting country and importers known to be concerned, the representatives of the exporting country, and the complainant. Parties directly concerned were given the opportunity to make their views known in writing and to request a hearing.
- (4) Representatives of several Japanese producers, complainant companies and importers made their views known in writing, and requested and were granted a hearing.
- (5) The Commission sought and verified all information it deemed necessary for the purposes of the investigation and carried out an investigation at the premises of the following producer in Japan :

— Nakajima All Co., Ltd, Tokyo, Japan.

<sup>(1)</sup> OJ No L 209, 2. 8. 1988, p. 1.

<sup>(2)</sup> OJ No L 163, 22. 6. 1985, p. 1.

<sup>(3)</sup> OJ No L 50, 24. 2. 1988, p. 5.

<sup>(4)</sup> OJ No L 101, 20. 4. 1988, p. 4.

<sup>(5)</sup> OJ No L 203, 28. 7. 1988, p. 1.

<sup>(6)</sup> OJ No L 128, 21. 5. 1988, p. 39.

<sup>(7)</sup> OJ No L 183, 14. 7. 1988, p. 39.

<sup>(8)</sup> OJ No L 203, 28. 7. 1988, p. 25.

<sup>(9)</sup> OJ No C 315, 14. 12. 1990, p. 6.

<sup>(10)</sup> OJ No C 283, 30. 10. 1991, p. 13.

- (6) The Commission examined the economic situation of the Community industry in the period from 1 January 1987 to 31 December 1990.

- (7) The investigation overran the normal duration of one year provided for in Article 7 (9) (a) the basic Regulation due to the complexity of the investigation, in particular the assessment of the status of the Japanese and Community industry. Moreover, new developments occurring after the period investigated and affecting the Community industry, added to this delay (see recital (27)).

#### B. THE PRODUCT UNDER INVESTIGATION; LIKE PRODUCT

- (8) The product covered by the present anti-dumping proceeding are ETWs, whether or not incorporating calculating mechanisms, defined by Article 1 (5) of Regulation (EEC) No 1698/85 as:

'a machine which is steered by microprocessor(s) and which initiates, implements and/or controls its relevant functions by means of software programs. Its main application is printed of text derived from a keyboard, even if an electronic typewriter can be used for additional functions (e.g. computing, communication and storage).'

- (9) The above definition covers a variety of models and versions which, however, are considered to be one product. Indeed, all these models have identical physical characteristics and uses; no clear dividing lines exist between the different models. No comments on that subject were made by interested parties.
- (10) The complainants argued that certain newly developed word processors ('WP') should also be covered by this product definition, since they are covered by the above definition.

The Commission examined the complainants' arguments as well as those put forward by other parties concerned, but concluded that WPs have different physical characteristics and end uses from those of ETWs. Therefore, in accordance with Article 2 (12) of the basic Regulation, WPs are not covered by the proceeding.

#### C. COMMUNITY INDUSTRY

- (11) Apart from the complainants, AEG Olympia, Wilhelmshaven, Germany, ('Olympia') produces ETWs in the Community and has acted as an independent importer of ETWs originating in Japan. Furthermore, one Japanese producer, Brother Industries Ltd., Nagoya, Japan, ('Brother Japan') argued that its subsidiary which is located in the EC ('Brother UK') and which, Brother Japan claimed, was a producer of ETWs, should be considered part of the Community industry.
- (12) It is the consistent practice of the Community to decide on a case-by-case basis whether certain producers in the Community may be excluded from the term 'Community industry' according to the first indent of Article 4 (5) of the basic Regulation. The assessment whether such exclusion is reasonable and equitable takes into consideration all the legal and economic aspects involved. The Community has on several occasions, concluded that an exclusion is justified where the producers in the Community either participated in the dumping practices, were shielded from their effects, or benefit unduly from them.
- (13) In the present review investigation, the Commission notes that Olympia is not related in any way to producers in Japan and that its ETW production in the Community remained substantial in comparison with the quantities of Japanese ETWs which Olympia imported. The company's purchases of ETWs of Japanese origin completed the lower end of its ETW product range sold. Finally, the Commission notes that Olympia imported ETWs solely from a Japanese producer not covered by any anti-dumping duty.

Consequently, it can be concluded that Olympia has shown its status as a Community producer by carrying out a substantial part of its production in the Community. Furthermore, the Commission considers that the importing producer, Olympia, has not participated in any dumping practice, since independent importers are not involved in dumping practices in general, and that Olympia, would not stand to gain from a lapse of the anti-dumping measures imposed by Regulation (EEC) No 1698/85, because it imported ETWs solely from a Japanese producer not covered by any anti-dumping duty.

Therefore, and following consistent practice, the Commission considers that Olympia should not be excluded from the definition of the Community industry on the basis of Article 4 (5) of the basic Regulation.

- (14) On the other hand, Brother UK is subsidiary of Brother Japan, which was found in the initial investigation to have practised dumping. Furthermore, the Commission considers that Brother Japan still remains a potential producer and exporter of ETWs, with its head-office and R&D facilities remaining in Japan, and may be expected to resume exports and would thus benefit from the lapse of the anti-dumping measures imposed by Regulation (EEC) No 1698/85. Moreover, Brother UK would potentially be shielded from renewed dumped imports originating in Japan. Therefore, the Commission concludes that Brother UK should be excluded from the definition of 'Community industry' under Article 4 (5) of the basic Regulation.
- (15) On the basis of the above considerations, the Community producers which have requested the review represent more than 65 % of the output of the product concerned of 'Community industry' as defined by Article 4 (5) of the basic Regulation. Accordingly, the Commission considers that these producers constitute a major proportion of the Community industry.

#### D. INJURY

##### 1. Community market

- (16) Total Community consumption of ETWs has increased from 2 million units in 1987 to around 2,3 million units in 1990.

##### 2. Situation of the Community industry

- (17) With respect to the situation of the Community industry, the Commission established the following development:

- total unit production decreased from around 613 000 in 1987 to 600 000 in 1989 and 570 000 in 1990 (indexed from 100 in 1987 to 98 in 1989 and 93 in 1990),
- sales measures in units decreased from a level of around 470 000 units in 1987 to 420 000 in 1989 and to around 400 000 in 1990 (indexed from 100 in 1987 to 89 in 1989 and 85 in 1990),
- market share decreased from around 25 % in 1987 to 20 % in 1989 and to 17 % in 1990,

- production capacity was substantially reduced as part of a restructuring programme, especially after the initial anti-dumping investigation, and fall continuously by around 10 % in the period 1987 to 1990,
- capacity utilization remained constant in the period from 1987 to 1990,
- employment has decreased from around 7 000 people in 1987 to 4 800 in 1989 and 4 500 in 1990 (in index from 100 in 1987 to around 68 in 1989 and 65 in 1990).
- the financial situation of the Community industry developed positively for the industry as a whole, despite certain negative trends for individual companies and individual ETW models, with an average rate of return on turnover of around 8 %.

#### 3. Conclusion

- (18) On balance, therefore, the Commission considers that despite a positive factor in the situation of the Community industry, in the form of the financial profits obtained on its Community sales, there remain substantial negative factors in the situation of the Community industry. The situation or while leads the Commission to conclude that the Community industry continues to show clear signs of economic weakness.

#### E. CAUSALITY

##### 1. General

- (19) The Commission assessed whether the abovementioned economic weakness of the Community industry has been caused by imports from Japan or by other factors.

##### 2. Japanese imports into the Community and relocation of production

- (20) Sales in the Community of ETWs originating in Japan, having decreased from a level of around 100 000 units in 1987 to around 95 000 units in 1988, increased again to 160 000 units in 1990. However, the ETWs imported in 1990 were almost all produced by one company which was not subject to anti-dumping duties imposed in the framework of this proceeding. In index form this development represents a decrease from 100 in 1987 to 95 in 1988 and an increase to 160 in 1990.

(21) Furthermore, the Commission took account of Eurostat import statistics in order to assess the level of Japanese ETW imports. This was considered necessary because not all Japanese producers named in the request for review responded to the Commission's questionnaire concerning import volumes. The Eurostat figures show an increase of imports from a level of around 215 000 units in 1988 to around 310 000 units in 1990. The absolute level of those import figures is higher than the data provided by the Japanese producers mentioned in recital (20), although the increase from 1988 to 1990 is lower in percentage terms. Although this discrepancy could be due to non cooperation by some of the Japanese producers concerned, the Commission concludes that it is highly likely that the discrepancy is due to the level of aggregation in the Eurostat figures, which do not include ETWs, as defined and covered by this proceeding, but include other electric, electronic and automatic typewriters ('TWs'). This conclusion is, moreover, supported by market research data which indicate substantial sales on the Community market of certain types of ETWs which were specifically excluded from the scope of the anti-dumping measures by (for example) Council Regulation (EEC) No 154/88<sup>(1)</sup>, but which are included in the Eurostat import statistics.

(22) In respect of imports of ETWs originating in Japan, the Commission concluded in its investigation that the reduction in production, sales, market share, capacity and employment shown above may not be regarded as the result of the imports subject to the anti-dumping proceeding.

(23) On the other hand, strategic decisions have been taken by the Community industry to relocate its production capacity in countries outside the Community. The general trend of relocation of production started on a large scale after the imposition of the anti-dumping measures and has culminated with the strategic decisions mentioned in recital (27). Indeed, the negative trend in the situation of the Community industry with respect to the production and sale of Community-produced ETWs corresponds to increases in its production outside the Community and to its increased sales inside the Community of ETWs which are produced elsewhere.

### 3. Conclusion

(24) Therefore, the Commission concludes that any aspects of the situation of the Community industry which could be interpreted as negative are attributable to its own restructuring and not to imports of ETWs originating in Japan.

## F. POSSIBLE EFFECTS OF THE EXPIRY OF THE EXISTING ANTI-DUMPING MEASURES REGARDING TREND AND IMPACT OF IMPORTS ORIGINATING IN JAPAN

### 1. General

(25) The present investigation being a review pursuant to Article 15 of the basic Regulation, the Commission had to assess in its investigation whether the expiry of the anti-dumping measures presently in force would lead again to injury or threat of injury. Such a recurrence of injury could be possible if there were a considerable production or production potential of ETW in Japan that could be directed to the Community in the near future.

### 2. Production potential in Japan

(26) As far as production and production potential of ETWs in Japan is concerned, the Commission assessed Japanese export statistics of finished ETWs and their parts to the EC and to third countries which do indicate an overall decrease in the years to 1990. Japanese export statistics were considered a reliable estimate of overall ETW production and production potential in Japan, since sales of ETW in Japan are negligible. No indication was given that in the meantime this downward trend had been reversed. Taking those findings into consideration, together with the relatively low level of imports into the Community of finished ETWs originating in Japan the great majority of which were exported by a Japanese producer whose ETW imports were not subject to the anti-dumping duties, the Commission considers that the likelihood of the Community industry being injured or being threatened with injury by dumped imports originating in Japan, should the anti-dumping measures presently in force lapse, is relatively small. Consequently, any recurrence of injury or threat of injury is considered to be neither foreseeable nor imminent.

<sup>(1)</sup> OJ No L 18, 22. 1. 1988, p. 4.

### 3. Developments after the period investigated

- (27) After the period investigated, namely 1987 to 1990, two companies which are part of the Community industry informed the Commission of recent strategic decisions. One company, while maintaining part of its ETW production in the Community, had decided to relocate a part of its ETW production in a third country and the other company stopped production of ETWs in the Community altogether.

### 4. Conclusion

- (28) The Commission concludes, on the basis of the findings concerning the absence of a causal link between the weak situation of the Community industry during the period from 1987 to 1990 and imports of ETWs originating in Japan, together with the findings relating to the likely effect of the expiry of the anti-dumping measures on the Community industry in the event of a repeal of the anti-dumping measures and the strategic decisions by the Community industry after 1990, that there is not sufficient evidence to suggest a recurrence of injury to the Community industry due to dumped imports from Japan.

### G. DUMPING

- (29) In view of those conclusions, the Commission does not consider it necessary to investigate further any dumping issues.

### H. TERMINATION OF THE INVESTIGATION

- (30) Accordingly, the Commission considers that the anti-dumping review concerning imports of ETWs originating in Japan should be terminated in accordance with Article 9 (1) of the basic Regulation. Consequently, the anti-dumping measures presently in force lapse in accordance with Article 15 (1) of the basic Regulation.

- (31) In reaching this conclusion, the Commission has taken into account the fact that, if the Community industry were to suffer material injury as a result of dumped imports made by Japanese producers in the Community market in the future, the Community industry could resort to the Commission to request that a new proceeding be opened.
- (32) Since the anti-dumping measures imposed with respect to certain ETWs assembled with in the Community (see recital (1)) are ancillary in nature to the anti-dumping measures with respect to imports of finished ETWs originating in Japan which will now lapse, those ancillary measures also expire.
- (33) No objections to these conclusions were raised in the Advisory Committee.
- (34) The complainants and the other interested parties concerned were informed of the essential facts and considerations on the basis of which the Commission intended to terminate the investigation, and did not dispute the arguments put forward above,

HAS DECIDED AS FOLLOWS:

#### *Article 1*

The anti-dumping review concerning imports of certain electronic typewriters originating in Japan is hereby terminated, with the result that the anti-dumping measures in force concerning those imports, and also electronic typewriters assembled in the Community, shall lapse.

#### *Article 2*

This Decision shall take effect on 30 June 1993.

Done at Brussels, 16 June 1993.

*For the Commission*

Leon BRITTAN

*Member of the Commission*