

## COUNCIL REGULATION (EEC) No 993/93

of 26 April 1993

## imposing a definitive anti-dumping duty on imports of certain electronic weighing scales originating in Japan

THE COUNCIL 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 14 and 15 thereof,

Having regard to the proposal from the Commission, submitted after consultation within the Advisory Committee as provided for by the abovementioned Regulation,

Whereas :

## A. PROCEDURE

- (1) By Regulation (EEC) No 2865/85<sup>(2)</sup>, the Commission imposed a provisional anti-dumping duty on imports of certain electronic weighing scales originating in Japan and accepted undertakings in respect of certain imports of such products originating in Japan.
- (2) By Regulation (EEC) No 1058/86<sup>(3)</sup>, the Council imposed a definitive anti-dumping duty on imports of certain electronic weighing scales originating in Japan.
- (3) Following a subsequent investigation covering the circumvention of this duty, the Commission, by Decision 88/398/EEC<sup>(4)</sup>, accepted an undertaking concerning electronic weighing scales assembled or produced in the Community.
- (4) In April 1990, the Commission published a notice<sup>(5)</sup> of the impending expiry of the undertakings mentioned in recital 1, in accordance with Article 15 (2) of Regulation (EEC) No 2423/88.
- (5) In June 1990, producers, representing a major proportion of the total Community production of retail electronic weighing scales, submitted to the Commission a request for review of Regulation (EEC) No 2865/85.

(6) In August 1990, a request for review of the definitive anti-dumping duty imposed by Regulation (EEC) No 1058/86 was lodged by the same producers in accordance with Article 14 (1) of Regulation (EEC) No 2423/88.

(7) Consequently, in February 1991, the Commission, after consultation, announced, by a notice published in the *Official Journal of the European Communities*, the initiation of a review of both Regulation (EEC) No 2865/85 and Regulation (EEC) No 1058/86 pursuant to Articles 14 and 15 of Regulation (EEC) No 2423/88, and opened an investigation<sup>(6)</sup>.

(8) In March 1991, in accordance to Article 15 (4) of Regulation (EEC) No 2423/88, the Commission published a notice<sup>(7)</sup> on the continuation in force of the anti-dumping measures during the review proceeding.

(9) The Commission officially notified the exporters and the Community importers and producers known to be concerned and gave them the opportunity to make known their views in writing and to request a hearing.

(10) Most of the Japanese exporters and most of the complainant Community producers made their views known in writing. Submissions were also made by a number of importers. Some of the parties directly concerned requested, and were granted, hearings.

(11) The Commission sought and verified all the information it considered necessary for a preliminary determination of dumping and injury and carried out investigations at the premises of the following :

(a) *Community producers*

- Bizerba Werke GmbH, Balingen, Germany,
- GEC Avery, Smethwick, United Kingdom,
- Maatschappij van Berkels Patent NV, Rijswijk, Netherlands,
- Testut, Béthune, France,
- Lutrana, Viry-Châtillon, France,
- Esselte Meto EST, Saint Maur, France,
- Brevetti van Berkel SpA, Milano, Italy,

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

<sup>(2)</sup> OJ No L 275, 16. 10. 1985, p. 5.

<sup>(3)</sup> OJ No L 97, 12. 4. 1986, p. 1.

<sup>(4)</sup> OJ No L 189, 20. 7. 1988, p. 27.

<sup>(5)</sup> OJ No C 106, 28. 4. 1990, p. 5.

<sup>(6)</sup> OJ No C 50, 26. 2. 1991, p. 3.

<sup>(7)</sup> OJ No C 81, 26. 3. 1991, p. 5.

- Santo Stefano SpA, Cassano Magnago, Italy,
- Vandoni SpA, San Donato Milanese, Italy,
- Grupo Campesa, Barcelona, Spain ;

(b) *Japanese exporting producers*

- Ishida Scales Mfg Co. Ltd, Kyoto,
- Teraoka Seiko Co. Ltd, Tokyo,
- Tokyo Electric Co. Ltd, Tokyo,
- Yamato Scales Co. Ltd, Akashi ;

(c) *Related importers*

- TEC Elektronik GmbH, Ratingen, Germany,
- TEC UK Ltd, Watford, United Kingdom ;

(d) *Unrelated importers*

- Biesta BV, Leusden, Netherlands,
- Carrin & Co. NV, Antwerp, Belgium,
- Digi System NV, Antwerp, Belgium,
- Herbert & Sons, Suffolk, United Kingdom.

- (12) The Commission requested, and received, written and oral submissions from the complainants, from the exporters named and from a number of related and unrelated importers and verified the information provided to the extent considered necessary.
- (13) The exporters, related importers and complaining industries were informed of the essential facts and considerations on the basis of which recommendations of the imposition of modified anti-dumping duties was envisaged. Due account was taken of the parties' representations in the findings of the Commission.
- (14) The investigation into dumping practices covered the period 1 January to 31 December 1990 ('the investigation period').
- (15) The investigation exceeded the normal period because of the volume and complexity of the data which had to be gathered and examined and because the completion of the investigation required the examination of new issues which had arisen during the proceeding and which could not have been foreseen at its outset.

**B. PRODUCT***Product description*

- (16) The products under investigation are 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) covered by

CN code 8423 81 50 and hereinafter referred to as 'REWS' (retail, electronic weighing scales).

REWS are produced with different types or levels of performance and technology. In this respect, the industry defines three segments of REWS, namely

- a low-range segment which comprises stand-alone REWS without built-in printer and preset key system,
- a mid-range segment with built-in printer and an additional preset key system,
- a top-range segment having the additional option of being connected to a computer system and of being computer-related.

- (17) Although the potential use and quality of REWS may vary, there is no significant difference in the basic physical characteristics or marketing methods within the various types of REWS. In addition, between these three segments there are no clear dividing lines, models in neighbouring segments being often interchangeable. They have, therefore, to be considered as one product for the purpose of this proceeding.

- (18) The Council confirms the above findings.

*Like product*

- (19) The investigation has shown that the various REWS sold on the Japanese market, despite differences in size, life-span, voltage or design, are identical to the REWS exported from Japan to the Community, or closely resemble them, and accordingly have to be regarded as like products.

Likewise, apart from minor technical differences, the Community-produced REWS in all three segments are alike in all respects to the REWS exported from Japan to the Community.

- (20) The Council confirms the above findings.

**C. EXPORT PRICES***Sales to independent importers*

- (21) Where sales were made direct to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the product sold for export to the Community. The Japanese producers identified these sales as being made at the level of importer/distributor or dealer, and the Commission is satisfied, on the evidence presented, that such was the case. In accepting this claim, the Commission took account of the functions of both seller and buyer based on the costs incurred and the quantities sold, on a consistency in the prices charged at this particular level and, finally, on the evidence available on the distribution chain.

- (22) The Council confirms that conclusion.

#### Sales to related importers

- (23) Where exports were made to related importers in the Community, export prices were constructed in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88, on the basis of resale prices to the first independent purchaser, adjusted to take account of all costs incurred between importation and resale together with a 5 % profit margin which was considered reasonable in the light of the information available to the Commission from the unrelated importer which cooperated.

The Commission, on the same grounds as those outlined above for sales to independent importers, accepted the Japanese producers' claims that the export prices, reconstructed to a cif Community-frontier basis, were made at the level of importer/distributor.

- (24) The Council confirms that conclusion.

### D. NORMAL VALUE

#### 1. Inadequate reply to the questionnaire

- (25) In the case of one of the Japanese producers concerned, the Commission was unable to use its reply to the questionnaire as the basis for establishing the normal value. The reply was deemed unreliable because the evidence supplied on costs was incorrect to a substantial degree. The true extent of the falsity or unreliability of the information presented by the company can be gauged from the fact that its claims for deductions from selling, general and administrative costs exceeded the total amount of those costs which the firm claimed were incurred for the product concerned. Consequently, the fact that the cost data could not be used meant that prices also had to be deemed unreliable because it could not be established whether they covered costs and were thus made in the ordinary course of trade.
- (26) In fact, new cost figures were presented during verification at its premises, but they diverged in important respects from those given in the original reply.
- (27) In that respect, the Commission recalls that it is essential for replies to questionnaires, and significant corrections to them, to be submitted within the reasonable period provided for this purpose, as a considerable amount of preparatory work and analysis of replies must be carried out by the inves-

tigating authorities prior to the verification visit. In the present case, however, the Commission attempted to verify the company's revised information, presented during the verification visit, but the fact that it was received during the visit and the confusing nature of the conflicting information precluded an adequately accurate identification and verification of actual costs. Thus, the Commission considered that the company's reply was substantially false or misleading and significantly impeded the investigation process. The Commission was accordingly unable to establish normal value for this company on the basis of the information supplied and established its findings on the basis of the facts available in accordance to Article 7 (7) (b) of Regulation (EEC) No 2423/88 (see recital 63).

- (28) The Council confirms that conclusion.

#### 2. Normal value based on prices in the exporting country

- (29) For the remaining Japanese producers, domestic sales were considered sufficiently representative as a basis for normal value since the Commission established that domestic sales volume exceeded 5 % of the export sales to the Community.

Most models were sold domestically in sufficient quantities and at prices which permitted the recovery of all costs reasonably allocated in the ordinary course of trade on the domestic market in Japan. Normal value was therefore for these models established on the basis of their weighted average domestic prices, net of all discounts and rebates directly related to the sales of REWS.

#### Selective normal value

- (30) Three Japanese producers claimed that a distinction should be drawn between the several categories of their independent buyers on the domestic market and that the normal value should be established selectively on the basis of the weighted average prices of their sales to one of those categories, i. e. alleged distributors or dealers which they claimed to be at the most appropriate level of trade for comparison with their export sales. They contended, in particular, that this special category of customer had different functions from the other unrelated customers, reflected in the scale and type of costs incurred, the quantities sold and the pattern of prices charged.
- (31) It is the Community institutions' consistent position that a specific level of trade can only be adequately identified if a demonstration is made of

all relevant factors, including the functions of both seller and buyer and the consistency of quantities, costs and prices at the distribution level in question as compared with other levels.

Another important question in identifying a specific category of customer is how that category stands in relation to the distribution system of the market concerned and whether this comparison can indicate that only this category should be compared to export customers holding a similar position in the distribution system of the export market.

- (32) One Japanese producer alleged that its sales were made through three distribution channels and that its normal value should be based on sales to customers alleged to have distribution functions which, this producer claimed, were made through only one channel.

For one of the three distribution channels, a distinction in quantities sold, a clear difference in costs, and prices which reflect different functions of the category of customer within that channel compared with other independent customers, confirmed that sales in the channel in question were made at a level of trade different from the sales to other categories of client and different from the categories of customer to which export sales were made. In addition, the evidence available on the distribution chain for the market concerned supported this producer's claims on customers' functions.

- (33) Regarding the other two distribution channels operated by that exporter, the Commission found that there was no clear distinction in quantities, in product sales costs or in prices charged in one distribution channel in relation to the other.

The Commission therefore concluded that, with respect to sales made within those two channels, no specific and clearly distinguishable category of customers could be identified. Accordingly, the normal value for this producer was established selectively on the basis of the weighted average domestic prices of its sales in those channels which were considered most appropriate for comparison with export sales.

- (34) The Council confirms that conclusion.
- (35) With regard to the claim of one of the other Japanese producers, the Commission found that the

information given in the reply to the questionnaire was misleading. In its reply the company had indicated that only the sales through one channel were made to distributors/dealers and claimed that normal value should be based selectively on those sales. However, on verification it was found that sales through a second channel were also being made to similar customers.

Therefore the claim was rejected, since normal value had to be based on sales made to the same category of independent customers.

- (36) Regarding this other channel, the company also claimed that a small portion of the sales were made to end-users and should be excluded, as they were at a different level of trade from export sales. However, the producer failed to establish adequately a consistency of quantities, costs and prices at one distribution level in relation to other levels.

In fact, the evidence provided on some of these factors for the specific category of customer in question showed that they were largely similar to other categories alleged to be different.

- (37) In those circumstances, the Commission concluded in respect of the producer in question that the evidence presented, which was often conflicting, was insufficient to demonstrate that sales were made to specific and clearly distinguishable categories of customer or that only one of those allegedly different categories was more appropriate than all domestic sales for comparison with the export prices. Thus, normal value for this producer was determined on the basis of all sales to independent customers.

- (38) The Council confirms that conclusion.

- (39) The third Japanese producer requested during the verification that normal value should be restricted to sales to distributors/dealers on the domestic market. This claim was not supported by any evidence concerning differences in costs and prices for such sales and is therefore rejected.

- (40) Normal value for this producer was therefore based on a weighted average of all sales made to independent customers in Japan.

- (41) The Council confirms that conclusion.

## Sales to related companies

- (42) One of the Japanese producers also claimed that normal value should be established on the basis of its sales to related sales companies — that is, on the basis of transfer prices within the meaning of Article 2 (7) of Regulation (EEC) No 2423/88 — and not based upon prices charged by those related companies to independent customers.
- (43) The Commission found that the producer in question had divided the tasks of marketing its production in Japan between the manufacturing company, selling direct to distributors or dealers, the sales department of the manufacturing company and two related sales companies which sold to end-users and over which the producer had financial control. The sales functions of those different parts of the group were not essentially different from each other. The division of production and sales activities as arranged within the group can in no way alter the fact that the group is a single economic entity which has thus organized activities which, in other cases, will be carried out by a single legal entity.
- (44) Another producer which made all domestic sales through a related sales company claimed that its normal value should not be based on prices charged by its sales company to independent customers but should be constructed on the basis of cost of production, excluding selling, general and administrative costs, incurred by the sales company. However, the Commission found that the latter performed functions falling into the category of those described in recital 43 and therefore also formed an economic entity with the manufacturing company.
- (45) Consequently, in both cases, and in accordance with the Commission's consistent practice upheld by the Court of Justice, the activities and functions of the various parts of the entity were treated as a whole. Thus, normal value was not established on the basis of transfer prices or of the cost of production of the manufacturing company alone, but on the basis of the prices charged on sales to independent customers.
- (46) The Council confirms those conclusions.

## 3. Normal value based on constructed value

- (47) Certain models sold domestically were similar but could not be directly compared to models sold for export to the Community, as a result of differences in technical specifications and physical characteristics. Those differences could not be evaluated with any precision, given the different nature of the

technology used and the variety of combinations of features and accessories which form part of the product.

- (48) The Commission, accordingly, refrained from establishing normal value for those models on the basis of domestic prices, since, in order to make domestic and import prices comparable to each other, this method would have required a great many adjustments which would have had to be based on estimations. Consequently, normal value was in these cases determined on the basis of constructed value.
- (49) The constructed values were established, in accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, on the basis of the costs in Japan, both fixed and variable, of materials and manufacture for the models sold for export plus a reasonable amount for selling, general and administrative expenses and profit.

As regards the selling, general and administrative expenses, the amounts were calculated by reference to the average expenses actually incurred by each producer concerned on its sales of REWS on the domestic market. The profit rate of each producer was calculated on a weighted-average basis for all domestic sales of the product concerned.

- (50) The Council confirms that finding.

## 4. Comparison

## General

- (51) Japanese exports were made to different Community customers at different prices and in different regions of the Community. Therefore, export prices were compared with normal value on a transaction-by-transaction basis.
- (52) Furthermore, for the purpose of a fair comparison between normal value and export prices, the Commission, in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88, took account, where warranted, of differences affecting price comparability wherever a direct relationship of those differences to the sales under consideration could be satisfactorily substantiated. All comparisons were made at the ex-works stage and at the same level of trade.

## Differences in physical characteristics

- (53) As far as differences in physical characteristics were concerned, normal value was adjusted by an amount corresponding to a reasonable estimate of the value of the differences.
- (54) The Council confirms that finding.

## Differences in selling expenses

- (55) As far as differences in selling expenses were concerned, normal value and export prices were adjusted in order to take account of differences in credit terms, warranties, commissions, salaries paid to sales personnel, packing, transport, insurance, handling and ancillary costs, wherever evidence was given that these expenses were directly related to the sales under consideration.

(a) *Sales staff salaries*

- (56) As regards salaries for personnel involved in domestic sales, several Japanese producers had requested an allowance for salaried costs for personnel partly engaged selling REWS and partly involved in activities concerning other products. An allowance was granted for the portion of costs incurred in selling the product concerned.

Some of the salaried costs for which allowances were claimed related to administrative and promotional activities. The companies were, however, unable to relate those costs to the product concerned and they were therefore considered to be general overheads which did not affect price comparability. The Commission, consequently, rejected the claim for deduction of such costs.

- (57) The Council confirms that conclusion.

(b) *After-sales servicing*

- (58) Some companies claimed an adjustment for after-sales servicing but were not in a position to link the costs directly to the particular sales transactions regarding the product under consideration.

The Commission therefore concluded that the costs in question had to be considered general overheads for which no adjustment could be made under Article 2 (10) of Regulation (EEC) No 2423/88. The claim was consequently rejected by the Commission.

- (59) The Council confirms that conclusion.

(c) *Credit terms*

- (60) The Commission made adjustments for credit granted to customers, where it received evidence of a fixed credit period agreed with the buyer at the date of sale. Several exporters claimed that such adjustment for credit terms should also be granted

where no fixed credit period had been agreed or where an agreed period had been exceeded and that the cost of credit in such cases should be calculated on the basis of the normal interest in Japan for short-term borrowing.

Those claims were examined in order to establish whether, as required by Article 2 (9) (a) of Regulation (EEC) No 2423/88, the credit costs in question could be considered to have affected price comparability. In principle, price comparability can only be affected by factors known to the buyer when he decides on the purchase. Credit periods which, contrary to the usual practice in Japan, are not agreed at the date of sale do not fall into this category. In addition, the Commission found that such credit periods varied considerably from one customer to another. In such circumstances, the Community institutions would normally have rejected the claims. In this case, however, and in conformity with the line taken in previous proceedings, the Commission estimated the adjustment for these sales on the basis of 30 days of credit. This was considered to represent the usual average period of credit granted to buyers of products in the same business sector on the Japanese market.

- (61) The Council confirms those conclusions.

(d) *'Trade-in allowance'*

- (62) A Japanese producer claimed an allowance for trade-in payments made where a purchaser (in general, distributors or dealers) of new machines 'traded in' old and/or used machines. It was established that the value of the product traded in did not appear on the invoiced amount. The producer, however, argued that this should not be considered to be relevant since trade-in operations were directly related to the sales under consideration and sellers were allowed directly to offset the value of the trade-in against the invoiced sales price. This producer therefore argued that its financial contribution to the activities of their customers should be treated as a rebate and should therefore be deducted from normal value.

- (63) The Commission, however, in conformity with its consistent practice upheld by the Court of Justice, considered that the contribution in question was not a rebate but in fact a payment for which a certain value was obtained.

Indeed, with the removal of traded-in machines from the market, the demand for new machines is maintained at the highest possible level. This higher demand stimulates not only prices but also higher sales volumes and production levels which should normally result in increased economies of scale and commensurately higher profit levels.

In these circumstances, the 'rebates' in question were considered to be the equivalent to the value which the manufacturer attaches to the withdrawal of the old and/or used REWS from the market.

The payments were therefore not deducted from the price actually paid or payable by the buyer, and the full domestic price was retained for the purpose of comparison.

- (64) The Council confirms that finding.

#### 5. Dumping margins

- (65) The weighted-average dumping margins for each Japanese producer concerned, as a percentage of free-at-Community-frontier values, exceeded 60 % in all cases, except for Yamato Scales Co. Ltd, for which the margin was 15,3 %.

- (66) In the case of firms which failed to cooperate or where the Commission was unable to use the producer's submission (see recital 27), the dumping margin should be established on the basis of the facts available, pursuant to Article 7 (7) (b) of Regulation (EEC) No 2423/88.

The Commission considered that the most reasonable elements were those established during the investigation and that to attribute to such firms a dumping margin lower than the highest established for the cooperating companies would act as a bonus for non-cooperation and could lead to circumvention of the anti-dumping measures.

- (67) The Council confirms that finding.

#### E. RECURRENCE OF INJURY

- (68) In the case under consideration, the Commission had to determine, in accordance with Article 15 (3) of Regulation (EEC) No 2423/88, whether the expiry of the measures in force would lead again to injury or threat of injury.

Therefore it was necessary to examine the present economic situation of the Community industry and

the behaviour of the Japanese exporters on the Community market.

#### 1. Situation of the Community industry

##### Community market

- (69) The Community market for REWS remained stable in size, rising from some 135 000 units in 1988 to 140 000 units in 1989 and falling to 135 000 units in 1990.

##### Production capacity, utilization rate and stocks

- (70) Community production of REWS fell from 140 000 units in 1988 to 122 000 units in 1989 and 114 000 units in 1990. Though production capacity also fell from 181 000 units in 1988 to 166 000 units in 1989 and 155 000 units in 1990, the utilization rate decreased from 77 to 73 %.

- (71) Stocks remained at a continuously high level (more than 10 % of the total Community production) between 1988 and 1990.

##### Sales volume and market share

- (72) The quantity of REWS sold in the Community by the Community industry fell from 113 000 units in 1988 to 105 000 units in 1989 and to 97 000 units in 1990. The Community industry's market share changed as follows: 84 % in 1988, 75 % in 1989 and 72 % in 1990.

##### Price trends

- (73) Prices of the Community industry decreased between 1988 and 1990 by nearly 6 % on a weighted-average basis. This downward trend coincided with an overall price decrease on imported REWS and considerable price undercutting by Japanese imports (see recitals 78 to 81).

##### Profits

- (74) The Commission found that, overall, the Community industry has shown poor financial results since 1988. In 1990, a negative return on sales of 5,5 % on a weighted-average basis was recorded. One Community producer, who suffered considerable losses throughout the cited period, discontinued production at the end of 1990.

##### Employment and investment

- (75) Between 1988 and 1990, the Community industry shed 245 jobs, representing 16 % of its labour force; investments were cut back and two factories closed.

(76) The Council confirms those findings.

## 2. Exporters' behaviour on the Community market

### Volume and market shares of the dumped imports

(77) Despite the measures in force, the volume of dumped REWS imported from Japan rose from 13 000 units in 1988 to 17 000 units in 1989 and to approximately 19 000 units in 1990. The market share of Community consumption held by Japanese imports rose from 9,8 % in 1988 to 12,1 % in 1989 and to 14,6 % in 1990.

### Price of dumped imports

(78) The Commission investigated whether price undercutting was practised by the Japanese exporters during the investigation period. To this end, the exporters' sales in six Community markets (United Kingdom, Germany, Netherlands, Belgium, France and Greece) were examined, where nearly all Japanese imports were sold.

(79) The Commission first selected representative REWS of the various segments (low-range, mid-range, high-range models) marketed by the Community producers. The Commission then considered the Japanese export models in the same segments which were directly comparable with the Community producers' models, so that no adjustments for technical differences had to be made.

Prices for the models concerned were compared on the basis of sales made at the same level of trade (distributor/dealer level).

(80) The comparison outlined above showed widespread and consistent price undercutting on the part of all exporters, ranging from 20 to 70 %.

(81) The Council confirms those findings.

## 3. Conclusions

(82) On the basis of the above, the Commission concluded that the Community industry is in a precarious situation. Indeed, it suffered substantial price erosion which provoked further financial losses and a reduction in sales volume and market share.

This situation was highly influenced by the fact that the dumped imports were made in an open and transparent market where prices are very well known. Price elasticity and huge price undercutting

therefore had a clear effect on the sales volumes and the financial results of the Community industry.

For those reasons the Community industry could not take advantage of the anti-dumping measures in force.

(83) The Council confirms that conclusion.

(84) The Commission has also considered whether factors other than the dumped imports could have prevented the Community industry from regaining economic health.

(85) In that respect, one exporter alleged that the effects of the increase in volume and the low price of REWS imports from other countries, principally Singapore, the Republic of Korea, Taiwan and Turkey, have been at least partly responsible for the precarious situation of the Community industry.

(86) The Commission is at present examining the effects of the imports of REWS from Singapore and Korea. However, even if these imports are found to have injured the Community industry, this cannot eliminate the fact that the dumped exports from Japan, because of their high volume and particularly low prices, remained an important factor which prevented the Community industry from improving its economic situation.

As far as imports from Taiwan are concerned, the Commission found that such imported scales from Taiwan were mostly counting scales which are not comparable to the product under consideration.

Finally, no imports from Turkey took place during the investigation period.

(87) Apart from the above, the Commission did not find any other factors which could explain the difficult economic situation of the Community industry. Indeed, there were no substantial imports other than those mentioned above, nor was there any contraction in demand.

(88) On the basis of the above, the Commission concludes that, while other imports may also have contributed to the injury, the dumped Japanese imports, taken in isolation, have to be considered an important cause of the unsatisfactory situation of the Community industry.

## 4. Possible effects of expiry of the measures

(89) In those circumstances, the Commission is of the opinion that the expiry of the measures would worsen the situation of the Community producers.



- (90) Indeed, if there are no measures, an increase in the undercutting by Japanese imports has to be expected. This would lead to further losses in market share for the Community industry and would negatively affect its sales and market share.
- (91) In that connection, two factors deserve particular attention. On the one hand, the Japanese producers have recently expanded their production capacity. On the other hand, the Community market is at present in a recession. This points to the conclusion that pressure from Japanese dumped imports is likely to increase and that the Community industry is now even more vulnerable to such practices than in previous years.
- (92) That being so, it can be clearly foreseen that the Community industry will suffer material injury from the dumped imports in the event of the expiry of the anti-dumping measures. The Commission therefore concludes that these measures should not be allowed to lapse but should be adjusted in the light of the evidence of dumping and of the economic situation of the Community industry.
- (93) The Council confirms those conclusions.
- (94) Though end-users, which are all professionals, may have to bear an increase in prices, the present low prices were the result of unfair competitive behaviour. They cannot therefore expect to continue to take advantage of the effect of such practices.
- (95) For these reasons, the Commission considers that Community interests call for intervention in order to prevent the continuation of injury and a further deterioration in the economic situation of the Community industry.
- (96) The Council confirms that conclusion.

#### G. LEVEL OF THE DUTY

- (97) When calculating the amount of duty necessary to enable the Community industry to regain a healthy and non-injurious situation, the Commission had to bear in mind that the Community industry as a whole was not profitable. Accordingly, it is considered necessary for the measures taken to allow the Community industry to increase its prices so as to cover its costs of production and to obtain a reasonable return on sales.
- (98) In the circumstances of the industry concerned, it was found that, based on normal market conditions and the industry's ongoing long-term investment requirements, an annual return on sales of 10 % before tax could be regarded as an appropriate minimum.

#### F. COMMUNITY INTEREST

- (99) With respect to Community interests, the Council recalls that it had already concluded, in its original proceeding, that Community interests called for intervention in order to prevent injurious dumping. The Commission considers that no substantial change in this situation has occurred since then. This applies specifically to the negative influence which the disappearance of the Community industry would have on the supply industry. Indeed, REWS involve increasingly high-level technology and any loss of technological know-how in the REWS sector would mean a loss of competitive edge in the electronic sector as a whole.
- (100) While the Commission recognizes that maintaining anti-dumping measures in force will continue to affect price levels of the exporters concerned in the Community and may subsequently have some influence on the relative competitiveness of their products, those measures are intended to restore normal and fair market conditions. In addition, the removal of the unfair advantages gained by the dumping practices is designed to prevent the further decline of the Community industry and thus help to maintain the availability to the consumer of the widest possible choice of product.
- (101) In order to establish the margin by which the prices of Japanese producers should be increased to allow the Community industry to achieve the abovementioned return on sales, the Commission classified the most representative REWS produced and marketed by the Community producers into three segments (see recital 16), calculated for each segment a weighted-average price on an ex-works basis (see recital 49) and compared these prices to the prices at Community frontier of the similar Japanese export models, duly adjusted. The difference between these prices reflects the price increase at the Community frontier considered necessary to defeat the injurious effects of the dumped imports.
- (102) Except for one company, these price increases were considerably lower than the dumping margins found and therefore determine the level of anti-dumping duties, in accordance with Article 13 (3) of Regulation (EEC) No 2423/88. For the latter company, it is the dumping margin which should be imposed as a duty.

(102) Accordingly, the following duties should be imposed :

— Tokyo Electric Co. Ltd	22,5 %
— Ishida Scales Mfg Ltd	31,6 %
— Teraoka Seiko Co. Ltd	22,6 %
— Yamato Scales Co. Ltd	15,3 %

(103) In the case of companies which failed to cooperate in the investigation, the Commission considered that the duties should be established on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. It was considered that the most reasonable elements were those established during the investigation and that to attribute to such firms a duty lower than the highest established for the cooperating companies, namely 31,6 %, would act as a bonus for non-cooperation and could lead to circumvention of the anti-dumping measures.

(104) The Council confirms those findings.

#### H. PREVIOUS REGULATIONS

(105) Regulations (EEC) No 2865/85 and (EEC) No 1058/86 should accordingly be repealed.

#### I. ANTI-CIRCUMVENTION MEASURE

(106) By Decision 88/398/EEC, the Commission accepted an undertaking from TEC (UK) Ltd concerning certain electronic weighing scales assembled in the Community.

(107) The Commission considers that, on the basis of the regular and detailed information submitted by the company concerned, no circumvention has taken place since the acceptance of that undertaking. In

these circumstances, the Commission considers that Decision 88/398/EEC should be repealed,

HAS ADOPTED THIS REGULATION :

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of electronic weighing retail trade scales falling within CN code 8423 81 50 (Taric code 8423 81 50 \*10) and originating in Japan.

2. The rate of the duty shall be 31,6 % (Taric additional code 8697) of the net free-at-Community-frontier price before duty, with the exception of retail electronic weighing scales produced by the companies below, to which the following rates shall apply :

— Tokyo Electric Co. Ltd, Tokyo (Additional Taric code 8694)	22,5 %
— Teraoka Seiko Co. Ltd, Tokyo (Additional Taric code 8695)	22,6 %
— Yamato Scales Co. Ltd, Akashi (Additional Taric code 8696)	15,3 %

3. Regulations (EEC) No 2865/85, (EEC) No 1058/86 and Decision 88/398/EEC are hereby repealed.

4. The provisions in force concerning customs duties shall apply.

#### Article 2

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 Luxembourg, 26 April 1993.

*For the Council*

*The President*

B. WESTH