Reproduced herewith are replies received from the delegation of the EEC to questions raised by the delegation of Japan in document ADP/W/162 on Council Regulation (EEC) No. 1761/87 of 22 June 1987 (ADP/1/Add.1/Suppl.5) amending Regulation (EEC) No. 2176/84 on protection against dumped or subsidized imports from countries not members of the EEC. Also reproduced are Regulations and Decisions adopted by the EEC in April 1988 upon the conclusion of investigations carried out under Article 13:10 of Regulation No. 2176/84 as amended.

A. GENERAL OBSERVATIONS

Before answering in detail the questions raised by Japan, the European Community would like to make the following general observations in order to explain the nature and the underlying principles of its legislation concerning anti-circumvention of anti-dumping duties.

1. This legislation was adopted after experience had shown that the opening of an anti-dumping proceeding was likely to be followed by the establishing of operations in the Community whereby the product subject to the proceeding was assembled by European subsidiaries of the exporting companies concerned or other parties associated or related to them. The parts assembled were essentially imported from the exporting country. Since the anti-dumping duty eventually imposed did not apply to the finished products resulting from this process, the exporters were thus able to sell in the Community without being subject to the duty, although they had been found to dump and to cause injury to the Community industry.
2. This is typically a circumvention situation against which Parties are entitled to take action. In so doing the Community legislation took great care to define precisely the conditions where the evasion of anti-dumping duties is obvious. These conditions are:

a) a definitive anti-dumping duty must have been imposed on the finished product in question (which of course implies that dumping as well as injury has been established);

b) there must be a relationship or association between the firm carrying out the assembly operation in the Community and the firm which has been found to dump the finished product;

c) the assembly operation must have been started or substantially increased after the opening of the anti-dumping investigation;

d) regarding the origin of the components of the product assembled, there must be preponderance of parts originating in the exporting country. The Community legislation indeed requires the value of those parts to exceed the value of all other parts or materials by at least 50%.

If all these conditions are fulfilled, the duty may be extended to the assembled product. When taking this decision, account will be taken of the particular aspects of each case such as the level of research and development and technology applied in the Community. The level of the extended duty will be proportional to the value of the parts or materials imported from the country of exportation of the completed product found to have been dumped.

3. Since anti-dumping duties are imposed after a lengthy and detailed investigation into injurious dumping regarding imported finished products, the essential question, when confronted with assembly operations, is not the dumping and injury caused by the imported finished products nor by imported parts but whether the assembly operations constitute circumvention of the anti-dumping duties imposed. The Community's investigations, accordingly, concentrate exclusively on this point.
4. As regards the legal basis for the legislation to cover such circumstances, Japan raises the issue of the most appropriate enabling article of the GATT. The Community notes that at least one other Party has taken measures which seem to be based on Article VI, apparently on the basis that parts and finished products should be considered as like products. No position is taken by the Community on this approach but, in any event, anti-circumvention measures are justified by Article XX(d) which provides for the adoption, by any Contracting Party, of measures necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of the GATT.

B. RESPONSES TO THE SPECIFIC QUESTIONS RAISED BY JAPAN

PART I

1. Article XX(d) does not require an investigation into the dumping and injury aspects of imported parts and materials to be used in assembly operations in the Community. What is required by this article is a) that there is a measure of commercial policy which is in conformity within the GATT and b) that there is circumvention of this measure. The conformity with the GATT rules of Community anti-dumping measures results from the investigation into dumping and injury regarding the imported finished product; there is, consequently, no question of a contravention of Articles VI(2) and VI(6)(a) of the GATT and of Article 1 of the Anti-dumping Code. The existence of circumvention has to be established on the basis of the criteria laid down by the Community legislation (Article 13(10) of Regulation (EEC) No 2176/84). Community anti-circumvention investigations concentrate essentially on this point.

2. Any anti-circumvention duty imposed would be based on the objective criteria set out in the Community legislation which defines when there is circumvention of an anti-dumping duty by the assembly of products in the Community. Since only parties subject to an anti-dumping duty can circumvent such duty, the legislation only applies to assembly operations carried out on behalf of such parties, i.e. parties which are related or associated to any of the manufacturers whose exports of the like product are subject to a definitive anti-dumping duty. Thus, the definition of the scope of the legislation results logically from the concept of duty evasion and is by no means discriminatory in the meaning of Article 8(2) of the Code.
The legislation distinguishes parts and materials originating in the country of exportation of the product subject to the anti-dumping duty and all other parts. Contrary to the assertions of Japan, there is no provision that a specific proportion of parts must be of Community origin. There is thus no conflict with Article III(1) or III(5) of the GATT.

3. The legislation is aimed solely at products which would normally be subject to the duty but which would evade payment merely by being assembled in the Community. The amendment's sole purpose is to counter circumvention of anti-dumping duties by assembly in the Community. Articles VI of the GATT and 8(2) of the Code are therefore not relevant in this case.

4. The Community legislation merely secures the collection of anti-dumping duties which would otherwise be evaded by assembly operations. The duty designed to counteract circumvention necessarily has the same nature as the duty evaded. Its collection is assured by the same authorities, i.e. the customs authorities. There can, therefore, be no question of such measures being an internal tax.

5. Securing compliance with domestic regulations imposing anti-dumping duties is legitimate under Article XX(d) since these regulations are as such consistent with the provisions of the GATT. It is a general feature of customs legislation that any action leading to evasion of duties is normally illegal. Countering circumvention is therefore neither an unjustifiable discrimination nor a disguised restriction on international trade.

PART II

1. The scope of circumvention

(1) The "scope of circumvention" is defined in Article 13(10) of Regulation (EEC) No 2176/84 and covers a number of conditions which are mentioned above (see "General observations", point 2). One of these conditions relates to the value of the imported parts and provides that circumvention by means of assembly in the Community occurs only when there is preponderance of parts and materials originating in the exporting country concerned. Theoretically, such a preponderance would
occur as soon as the value of parts from the exporting country exceeds the value of all other parts. By requiring that the value of parts from the exporting country must exceed the value of all other parts by at least 50%, the Community legislation applies extremely rigorous standards.

(2)(i) Experience in the three cases currently being investigated has shown that alleged difficulties in obtaining parts and materials from alternative sources are virtually non-existent in the three industries in question.

(ii) There can clearly be no strict rule on levels of variable costs, research and development and technology applied. Decisions on the application of the paragraph of Article 13(10) covering these issues will therefore be reached on a case by case basis.

(iii) This point is similar to point b)(i) above. Experience has shown that, even during a start-up period it is unnecessary to source more than 60% of parts and materials from the exporting country concerned.

(iv) For the Community, the concept of circumvention is based on factual criteria in the same way as the concept of dumping as set out in Article VI of the GATT and in the Anti-dumping Code. There is, therefore, no reference to intent in the Community legislation. As regards circumvention, the criteria are that the assembly operation must a) have been carried out by a company related or associated to an exporter subject to an anti-dumping duty, b) have been started or substantially increased since the initiation of the anti-dumping investigation and c) incorporate more than 60% in value of parts originating in the country of export of the finished product. The date of any decision to create assembly facilities is therefore irrelevant in this context.

(v) The relationship between an assembler in the Community and its supplier of parts and materials is not relevant under Community legislation. It must, however, be established that there is a relationship or an association between the assembler and an exporter of products subject to the anti-dumping duty.
Under modern business conditions the parts and materials required in a production or assembly operation are often produced by firms with no relationship to the assembling company. Sub-contracting has become a common feature of such operations. Whether sourcing of parts from independent companies or sub-contracting takes place is irrelevant in a normal anti-dumping investigation carried out under the provisions of Article VI of the GATT. In such circumstances even if 100% of parts and materials are sourced from independent suppliers and part of the assembly operation is sub-contracted, this would have no bearing on the calculation of the level of dumping. Accordingly, the Community does not see how such circumstances could be relevant in an anti-circumvention investigation.

If the Community had limited its legislation to parts supplied by exporters of the finished product in question the increased potential for circumvention is clear. Therefore, the Community's approach does not go beyond the terms of Article XX(d) of the GATT which provides for measures necessary to secure compliance with regulations imposing anti-dumping duties.

2. Review and refund

Review and refund procedures will, of course, be fully applicable in accordance with the provisions of Articles 14, 15 and 16 of the Community anti-dumping legislation (Reg. EEC No. 2176/84)

PART III.

1. The terms "related" and "associated" originate in the Anti-dumping Code and have accordingly the same meaning as in that agreement. The Community legislation would not apply should assembly in the Community not be carried out by or on behalf of an exporter of the product subject to the anti-dumping duty.

2. The complaint must contain sufficient evidence of the existence of circumvention of an anti-dumping duty with particular reference to the criteria set out in Article 13(10).
3. Article 13(10)(d) specifies that the provisions of Regulation (EEC) No 2176/84 concerning investigation, procedure etc. apply equally to investigations under that Article. The terms of the Regulation on these matters are based on the provisions of the GATT Anti-dumping Code and, accordingly, all interested parties will have the right to be heard, make submissions, receive disclosure of the Community Institutions' intentions and make comments thereon in the normal fashion. Provisional measures will not be imposed. Undertakings may be accepted if considered satisfactory and where the Community interests require that action should be taken.

4. A decision on the treatment of a component or sub-assembly produced or assembled in the Community will depend on the nature of the component or sub-assembly and its origin under Regulation (EEC) No 802/68.

5. This point is answered in II 1.b (v) above.

6. Duties extended to cover products assembled in the Community may legitimately be imposed with effect from the entering into force of the relevant definitive anti-dumping duty which is circumvented by the assembly operation. This is not the kind of application that can be criticised as retroactive, because the measure is aimed at counteracting the evasion of the initial anti-dumping duty on imports of the finished product and because the parties must be aware of the possibility that anti-circumvention measures could be adopted. An appreciation of the appropriateness of such action will be made on a case by case basis.
COUNCIL REGULATION (EEC) No 1021/88
of 18 April 1988
extending the anti-dumping duty imposed by (EEC) No 1058/86 to certain
electronic scales assembled in the Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), as amended by Regulation (EEC) No 1761/87 (2), and in particular Article 13 (10) thereof,

Having regard to the proposal submitted by the Commission after consultations within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. Procedure

(1) In July 1987, the Commission received a complaint lodged by W & T Avery Ltd, Esselte Moreau SA and Bizerba-Werke Wilhelm Kraut GmbH & Co. KG, representing the majority Community production of electronic scales. The complaint contained sufficient evidence of the fact that following the opening of the investigation on electronic scales originating in Japan (3), which led to the adoption of Regulation (EEC) No 1058/86 (4) imposing a definitive anti-dumping duty on imports of those products, two companies were assembling electronic scales in the Community under the conditions referred to in Article 13 (10) of Regulation (EEC) No 2176/84. After consultation, the Commission accordingly announced, by notice published in the Official Journal of the European Communities (5), the initiation of an investigation, under the said Article 13 (10), concerning electronic scales assembled in the Community by the following companies:

— TEC (UK) Ltd, Preston, United Kingdom,
— TEC-Keylard Weegschalen Nederland BV.

(2) The Commission so advised the companies concerned, the representatives of Japan and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(3) The two companies concerned as well as the complainants made their views known in writing. TEC (UK) and the complainants requested and were granted hearings by the Commission.

(4) No submissions were made by purchasers of electronic scales assembled in the Community. The Commission sought and verified all information it deemed necessary for the purpose of the assessment of the character of the alleged assembly operations and carried out investigations at the premises of the following companies:

— TEC (UK) Ltd, Preston, United Kingdom,
— TEC-Keylard Weegschalen Nederland BV.

(5) The period of investigation was from 1 January to 31 July 1987.

B. Relationship or association with exporter

(6) It was found that TEC (UK) was a subsidiary of TEC (Japan) and that TEC-Keylard had substantial capital links and close economic and commercial relations with TEC (Japan).

C. Production

(7) The two companies started their assembly operations after the initiation of the anti-dumping proceeding concerning the imports of electronic scales originating in Japan on 3 September 1983.
D. Parts

(8) The value of parts and the ratio between Japanese parts and parts of other origin were determined on the basis of the companies' purchase prices of these parts when delivered to the factories in the Community, that is on an into-factory, duty-paid basis.

TEC-Keylard

(9) TEC-Keylard claimed that some sub-assembled items of significant value used for some models were of Community origin. It was found that these items were assembled in the Community by an independent Community producer, from parts imported from Japan, from parts purchased in the Community, and from parts manufactured by this Community producer itself. On the basis of information received from two sources, one being the complainants carrying out virtually identical assembly operations themselves and the other being the company referred to above, it was concluded that this sub-assembly did constitute a substantial process or operation as required by Article 5 of Regulation (EEC) No 802/68 (1). The assembly operation and the manufacture of the components carried out in the Community was of a substantial nature. The item was thus of Community origin.

(10) The weighted average value of Japanese parts for all models produced by TEC-Keylard was found to be less than 60 %. The investigation is, therefore, terminated by a Commission Decision.

TEC (UK)

(11) Only one model was produced during the investigation period. It was found that the value of Japanese parts used by TEC (UK) was 92.38 % of the total parts value.

E. Other circumstances

(12) Consideration was given to other relevant circumstances with regard to the assembly operations referred to above, in accordance with Article 13 (10) (a) of Regulation (EEC) No 2176/84.

(13) It was found that no genuine attempts had been made by TEC (UK) to change the sourcing pattern.

(14) As to direct labour, it was found that a very limited number of new jobs had been created by the assembly operations of TEC (UK). Furthermore, this company only carries out simple assembly operations of a very basic nature, whereas the Community producers normally have an integrated, in-depth production which requires more personnel. Since the increased sales of assembled electronic scales result in decreased sales by the Community producers, it can only be concluded that the functioning of the assembly operation of that company has resulted in a net loss of employment in the Community.

(15) Furthermore, as regards research and development, it was found that none was carried out in the Community. In this context, TEC UK) claimed that the fact that its technical manager visited TEC Japan’s factory for two months in order to receive training as well as its decision to set up an R & D centre for the development of software application should be duly taken into consideration. This claim has to be rejected since these activities, one of which has yet to become operational, do not constitute research and development carried out in the Community for the products under consideration.

F. Conclusions

(16) In view of the foregoing, it is concluded that the anti-dumping duty imposed by Regulation (EEC) No 1058/86 should be extended to certain electronic scales assembled in the Community.

The amount of the duty to be collected, which takes the form of a flat-rate duty for the company concerned, was calculated in a manner to ensure that it corresponds to the percentage rate of the anti-dumping duty applicable to the exporters in question, on the cif value of the parts or materials from Japan as established for the investigation period.

G. Undertakings

(17) TEC (UK), against which protective measures are considered necessary, having been informed of the essential facts and considerations on the basis of which the present measures are being proposed, offered an undertaking referring, in particular, to the attainment of a certain proportion of parts originating in the Community. The Commission does not consider this undertaking to be acceptable at present for reasons that have been given separately to the interested company. The Commission is invited, however, to re-examine the acceptability of the undertaking and to proceed to the necessary verification as soon as it has been
informed by the company concerned that the conditions justifying the present extension of the anti-dumping duty to assembled products have been removed. Satisfactory guarantees should also be given that these conditions would not recur in the future.

HAS ADOPTED THIS REGULATION:

**Article 1**

1. The definitive anti-dumping duty imposed by Regulation (EEC) No 1058/86 on imports of electronic 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 these data) corresponding to CN code ex 8423 81 50, originating in Japan, is hereby also imposed on electronic scales introduced into the commerce of the Community after having been assembled in the Community by TEC (UK) Ltd, Preston, United Kingdom.

2. The duty shall be 65.63 ECU per unit assembled by the company concerned.

**Article 2**

1. Parts and materials suitable for use in the assembly or production of electronic scales by the company referred to in Article 1 (1) and originating in Japan can only be considered to be in free circulation in so far as they will not be used in the assembly or production operations referred to above.

2. Electronic scales thus assembled or produced shall be declared to the competent authorities before leaving the assembly or production plant for their introduction into the commerce of the Community. For the purpose of levying any anti-dumping duty, this declaration shall be considered to be equivalent to the declaration referred to in Article 2 of Directive 79/695/EEC (1)

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

**Article 3**

This Regulation shall enter into force on the day 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 Luxembourg, 18 April 1988.

*For the Council*

*The President*

G. STOLTENBERG

COUNCIL REGULATION (EEC) No 1022/88
of 18 April 1988
extending the anti-dumping duty imposed by Regulation (EEC) No 1698/85 to certain electronic typewriters assembled in the Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), as amended by Regulation (EEC) No 1761/87 (2), and in particular Article 13(10) thereof,

Having regard to the proposal submitted by the Commission after consultations within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. Procedure

(1) In July 1987, the Commission received a complaint lodged by CETMA, the Committee of European Typewriter Manufacturers, on behalf of French, German and Italian producers of electronic typewriters whose collective output constitutes practically all Community production of the product in question. The complaint contained sufficient evidence of the fact that following the opening of the investigation on electronic typewriters originating in Japan (3), which led to the adoption of Regulation (EEC) No 1698/85 (4) imposing a definitive anti-dumping duty on imports of those products, a number of companies were assembling electronic typewriters in the Community under the conditions referred to in Article 13(10) of Regulation (EEC) No 2176/84. After consultation, the Commission accordingly announced, by notice published in the Official Journal of the European Communities (5), the initiation of an investigation, under the said Article 13 (10), concerning electronic typewriters assembled in the Community by the following companies :

— Silver Reed International (Europe) Ltd, Watford, United Kingdom,
— Brother Industries (UK) Ltd, Wrexham, United Kingdom,
— Kyushu Matsushita (UK) Ltd, Newport, United Kingdom,
— Sharp Manufacturing Company of UK, Wrexham, United Kingdom,
— Canon Bretagne SA, Liffé, France,
— TEC Elektronik-Werk GmbH, Braunschweig, Germany.

(2) The Commission so advised the companies concerned, the representatives of Japan and the complainants, and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(3) All the companies concerned as well as the complainants made their views known in writing, requested and were granted hearings by the Commission.

(4) No submissions were made by purchasers of electronic typewriters assembled in the Community. The Commission sought and verified all information it deemed necessary for the purpose of the assessment of the character of the alleged assembly operations and carried out investigations at the premises of the following companies :

— Astec Europe Ltd, Stourbridge, United Kingdom,
— Brother Industries (UK) Ltd, Wrexham, United Kingdom,
— Canon Bretagne SA, Liffé, France,
— Kyushu Matsushita (UK) Ltd, Newport, United Kingdom,
— Sharp Manufacturing Company of UK Ltd, Wrexham, United Kingdom.

Furthermore, the Commission carried out an investigation at the premises of a supplier of sub-assemblies to some of the companies involved. Because it is not directly involved in this investigation, this company requested that its name be withheld. Given the circumstances, this request appears to be justified.

One other company, whose activities in the Community were to be investigated according to the opening notice, namely TEC Elektronik-Werk GmbH, Braunschweig, Germany, ceased assembling electronic typewriters in the Community before the beginning of the investigation. The investigation concerning this company was, therefore, terminated by a Commission decision.

(5) The period of investigation was from 1 January to 31 July 1987.
B. Relationship or association with exporter

(6) All companies referred to under point 1 were found to be wholly-owned subsidiaries of Japanese exporters of electronic typewriters which are subject to the definitive anti-dumping duty imposed by Regulation (EEC) No 1698/85.

(7) One company, namely Silver Reed International (Europe) Ltd, claimed that it should not be included in this investigation because the assembly operation was not carried out by Silver Reed but by Astec Europe Ltd. However, the investigation revealed that Astec's activities in this context were limited to the mere assembly of all parts of electronic typewriters which were imported and delivered to it at its premises by Silver Reed. These assembled electronic typewriters were then exclusively sold on the Community market by the Silver Reed Group. This group bore all costs between importation of the parts and the sale of the finished products. An assembly fee was paid to Astec by the Silver Reed Group but this fee constituted only a small percentage of Silver Reed's total costs of sale. In these circumstances, this assembly operation should be considered as having been carried out by Silver Reed.

C. Production

(8) All companies started their assembly operations after the initiation of the anti-dumping proceeding concerning imports of electronic typewriters originating in Japan on 24 March 1984.

D. Parts

(9) The value of parts in question was generally determined on the basis of the companies' purchase prices of these parts when delivered to the factories in the Community. Some companies requested fob or cif values be used. This request had to be rejected since the relevant value is that of the parts and materials as they are used in the assembly operations, that is on an into-factory, duty-paid basis.

(10) The companies' purchase prices were not used in those cases referred to in detail below where the investigation has shown that they did not adequately reflect their true value. In these cases, the purchase prices were replaced by appropriate alternative prices.

Canon

(11) The investigation revealed that, for some models, the transfer price of certain parts and materials originating in Japan and supplied by Canon Incorporated (Japan) to its subsidiary in the Community did not cover all the costs incurred by Canon Incorporated. The sales prices were, therefore, adjusted in order to ensure that they reflected Canon Incorporated's purchase price of those parts manufactured by third parties or the totality of Canon Incorporated's own production costs plus the sales, general and administrative expenses incurred by Canon Incorporated and shown in its public accounts.

Canon claimed that one sub-assembled item which was the most costly individual one used for some models was of Community origin. It was found, however, that this item was assembled in the Community, entirely from parts imported from Japan, by a subsidiary company of a Japanese producer which normally manufactures these products in Japan and supplies Canon's mother company there. On the basis of information received from two sources, one being an electronic typewriter producer carrying out a virtually identical assembly operation itself and the other being the company referred to above, it was concluded that this sub-assembly did not constitute a substantial process or operation as required by Article 5 of Regulation (EEC) No 802/68 (1). The simple assembly operation carried out in the Community was of a basic and unsubstantial nature compared with the manufacture of the components which was performed in Japan. The item was thus not of Community origin.

Canon requested that the assembly costs of one sub-assembly, incurred in its own factory, should be included in the value of Community parts. This request, however, cannot be granted because the cost of assembly cannot be included in the value of parts or materials used in the assembly or production operations, but constitutes a value added to these parts or materials in the assembly process.

It was found that the value of Japanese parts used by Canon varied according to model from 70 % to 95 % of the total parts value, the weighted average value of Japanese parts for all models assembled during the investigation period being 80 %.

Brother

(12) The weighted average value of Japanese parts for all models produced by Brother was found to be less than 60 %. The investigation is, therefore, terminated by a Commission Decision.

Kyushu Matsushita

(13) The investigation revealed, for almost all models, a situation identical to the one described under the second paragraph of point 11. The same conclusion was drawn.

It was found that the value of Japanese parts used by Kyushu Matsushita varied according to model from 77% to 94% of the total parts value, the weighted average value of Japanese parts for all models assembled during the investigation period being 82%.

Sharp

(14) The investigation revealed that the transfer price of certain parts and materials originating in Japan and supplied by Sharp Corporation (Japan) to its subsidiary in the Community did not cover all the costs incurred by Sharp Corporation. The same observations as in the first paragraph of point 11, can be made and the same conclusion drawn in the case of Sharp.

Sharp claimed that one sub-assembled item used for most models, which was the most costly individual one, was of Community origin. It was found, however, that Sharp Corporation (Japan) sold all individual items to an unrelated Community company which carried out the sub-assembly and subsequently sold the product to Sharp. Sharp claimed that the entire sales price should be included in the computation as Community value. On the basis of information provided by a company carrying out a complete production cycle of the product concerned and on the basis of generally known facts regarding this product, it was concluded that this sub-assembly did not constitute a substantial process or operation as required by Article 5 of Regulation (EEC) No 802/68. The simple assembly operation carried out in the Community was of a basic and unsubstantial nature compared with the manufacture of the components which was performed in Japan. This item was thus not of Community origin.

It was found that the value of Japanese parts used by Sharp varied according to model from 72% to 97% of the total parts value, the weighted average value of Japanese parts for all models assembled during the investigation period being 75.7%.

Silver Reed

(15) It was found that the value of Japanese parts used by Silver Reed varied according to model from 95% to 97%, the weighted average value of Japanese parts for all models assembled during the investigation period being 96%.

E. Other circumstances

(16) Consideration was given to other relevant circumstances with regard to the assembly operations referred to above, in accordance with Article 13(10)(a) of Regulation (EEC) No 2176/84.

(17) In most cases, Brother being an exception, it was found that, the nature of the parts sourced in the Community was relatively simple and that they were of low value, limited in one case to packaging materials only. All parts of a higher technological value were imported from Japan and few genuine attempts appear to have been made to substantially change the sourcing pattern.

(18) Some companies claimed that it was impossible to find sources of supply in the Community which guarantee a required level of quality. This was found to be an incorrect statement. Community producers of electronic typewriters, of comparable quality to those of the companies concerned, source their parts in the Community and Brother has proved that it is not indispensable to use predominantly parts of Japanese origin.

(19) Furthermore, it was claimed that it was extremely difficult to have a high level of sourcing of parts outside Japan during the earlier stages of the production of new models. The example of Brother, which has always had a high level of Community sourcing, has shown that this claim is incorrect.

(20) As to direct labour, it was found that a certain number of new jobs had been created by the companies concerned, in particular by Brother. However, the companies investigated only carry out assembly operations whereas the Community producers normally have an integrated, in-depth production which requires more personnel. Since the increased sales of assembled electronic typewriters result in decreased sales by the Community producers, it can only be concluded that the functioning of the assembling companies has resulted in a net loss of employment in the Community.

(21) Furthermore, as regards research and development, it was found that none was carried out in the Community. In this context, Sharp claimed that its so-called 'Creative Center Europe' and its 'Engineering Research Office' should be duly taken into consideration. The purpose of the former is to improve the design of Sharp products so as to ensure their complete compatibility with European
The purpose of the latter is to 'survey and collect data on the most advanced engineering techniques and developments' and 'to collate all available information on technological, research and development and engineering processes in Europe, analyse these and inform the Sharp companies 'of improvements and developments'. It is not evident that these activities relate to electronic typewriters and, in any case, they are not considered to constitute research and development carried out in the Community.

Some companies claimed to have transferred technology to the Community by setting up assembly operations. However, since assembly technology for electronic typewriters has been known in the Community for longer than in Japan, this claim cannot be accepted.

Kyushu Matsushita requested that it be taken into consideration that it had never exported complete electronic typewriters to the Community. However, the anti-dumping duty imposed by Regulation (EEC) No 1698/85 applies equally to Kyushu Matsushita and therefore Article 13(10) of Regulation (EEC) No 2176/84 is applicable to this case.

In view of the foregoing, it is concluded that the anti-dumping duty should be extended to certain electronic typewriters assembled in the Community. The amount of the duty to be collected, which takes the form of a flat-rate duty for each company, was calculated in a manner to ensure that it corresponds to the percentage rate of the anti-dumping duty, applicable to the exporters in question, on the cif value of the parts or materials from Japan as established for the investigation period.

The companies against which protective measures are considered necessary have been informed of the essential facts and considerations on the basis of which the present measures have been proposed. All these companies, with the exception of Silver Reed, offered undertakings referring, in particular, to the attainment of a certain proportion of parts originating in the Community. The Commission does not consider these undertakings to be acceptable at present for reasons that have been given separately to the interested companies. The Commission is, however, invited to re-examine the acceptability of undertakings and to proceed to the necessary verification as soon as it has been informed by the companies concerned that the conditions justifying the present extension of the anti-dumping duty to assembled products have been removed. Satisfactory guarantees should also be given that these conditions would not recur in the future.

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Regulation (EEC) No 1689/85 on imports of electronic typewriters, whether or not incorporating calculating mechanisms, originating in Japan, is hereby also imposed on electronic typewriters, whether or not incorporating calculating mechanisms, corresponding to CN codes 8469 10 00, ex 8469 21 00, ex 8469 29 00 and ex 8470 90 00, introduced into the commerce of the Community after having been assembled in the Community by:

- Canon Bretagne (France),
- Kyushu Matsushita (United Kingdom),
- Sharp (United Kingdom),
- Silver Reed (United Kingdom).

2. The rate of duty shall be as set out below per unit assembled by the companies concerned:

- Canon Bretagne (France) 44,00 ECU,
- Kyushu Matsushita (United Kingdom) 40,94 ECU,
- Sharp (United Kingdom) 21,82 ECU,
- Silver Reed (United Kingdom) 56,14 ECU.

Article 2

1. Parts and materials suitable for use in the assembly or production of electronic typewriters by the companies referred to in Article 1(1) and originating in Japan can only be considered to be in free circulation in so far as they will not be used in the assembly or production operations referred to above.

2. Electronic typewriters thus assembled or produced shall be declared to the competent authorities before leaving the assembly or production plant for their introduction into the commerce of the Community. For the purpose of levying an anti-dumping duty, this declaration shall be considered to be equivalent to the declaration referred to in Article 2 of Directive 79/695/EEC(1).

Article 3

3. The provisions in force concerning customs duties shall apply.
This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 18 April 1988.

For the Council
The President
G. STOLTENBERG
COMMISSION DECISION
of 18 April 1988
terminating the investigation under Article 13 (10) of Regulation (EEC) No 2176/84 concerning certain electronic scales assembled or produced in the Community with regard to TEC-Keylard Weegschalen Nederland BV
(88/227/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), as amended by Regulation (EEC) No 1761/87 (2), and in particular Article 13 (10) thereof,

After consultations within the Advisory Committee as provided for under the above Regulation,

Whereas:

A. Procedure

(1) In July 1987, the Commission received a complaint lodged by W & T Avery Ltd, Esselte Moreau SA and Bizerba-Werke Wilhelm Kraut GmbH & Co., KG, representing the majority Community production of electronic scales. The complaint contained sufficient evidence to the effect that following the opening of the investigation on electronic scales originating in Japan (3), which led to the adoption of Council Regulation (EEC) No 1058/86 (4) imposing a definitive anti-dumping duty on imports of those products, two companies were assembling electronic scales in the Community under the conditions referred to in Article 13 (10) of Regulation (EEC) No 2176/84. After consultation, the Commission accordingly announced, by notice published in the Official Journal of the European Communities (5), the initiation of an investigation, under the said Article 13 (10), concerning electronic scales assembled in the Community by the following companies:

— TEC (UK) Ltd, Preston, United Kingdom
— TEC-Keylard Weegschalen Nederland BV

(2) The Commission so advised the companies concerned, the representatives of Japan and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(3) The two companies concerned as well as the complainants made their views known in writing. TEC (UK) and the complainants requested and were granted hearings by the Commission.

(4) No submissions were made by purchasers of electronic scales assembled in the Community. The Commission sought and verified all information it deemed necessary for the purpose of the assessment of the character of the alleged assembly operations and carried out investigations at the premises of the following companies:

— TEC (UK) Ltd, Preston, United Kingdom
— TEC-Keylard Weegschalen Nederland BV

(5) The period of investigation was from 1 January to 31 July 1987

B. Relationship or association with exporter

(6) It was found that TEC (UK) was a subsidiary of TEC (Japan) and that TEC-Keylard had substantial capital links and close economic and commercial relations with TEC (Japan).

C. Production

(7) The two companies started their assembly operations after the initiation of the anti-dumping proceeding concerning the imports of electronic scales originating in Japan on 3 September 1983.

D. Parts

(8) The value of parts in question was determined on the basis of the companies purchase prices of these parts when delivered to the factories in the Community, that is on an into-factory, duty-paid basis.

TEC (UK)

(9) Only one model was produced during the investigation period. It was found that the value of Japanese parts used by TEC (UK) was 92,38 % of the total parts' value. Consequently and after taking into consideration the circumstances of the case,
the extension of the anti-dumping duty imposed by Regulation (EEC) No 1058/86 to certain electronic scales assembled in the Community by this company, was proposed by the Commission to the Council.

TEC-Keylard

(10) TEC-Keylard claimed that some parts purchased in the Community from a subsidiary of a Japanese manufacturer were, in fact, of non-Japanese origin. It was claimed that the abovementioned manufacturer had transferred its production from Japan to another Asian country and that no such products were produced in Japan during the investigation period. It was found that some of these parts effectively used by TEC-Keylard during the investigation period were of non-Japanese origin. Nevertheless, for the purpose of the calculation of the value of Japanese parts, the whole stock of such parts detained by TEC-Keylard at the end of the investigation period was considered to have been used in the assembly during the investigation period because it cannot be accepted that a part of another origin is effectively used in the assembly operation unless the stocks of parts of the first origin are exhausted.

(11) TEC-Keylard requested that the 'transformation costs' of some subassemblies incurred in its own factory should be included in the value of EEC parts. This request, however, cannot be granted because the 'transformation costs' are part of the total costs of assembly or production, they cannot be included in the value of parts or materials used in the assembly or production operation, but constitute a value added to these parts or materials in the assembly process.

(12) TEC-Keylard claimed that the value of software included in an electronic component used in a subassembly should be considered to form part of the total value of the subassembly. This request was granted because the value which is to be taken into consideration for the purpose of the investigation under Article 13 (10) of Regulation (EEC) No 2176/84 is the total value of parts of materials as they are used for the assembly of the product investigated.

(13) TEC-Keylard claimed that some subassembled items used for some models were of Community origin. It was found that these items were assembled in the Community, from parts imported from Japan and from parts purchased in the Community, by an independent Community producer. On the basis of information received from two sources, one being the complainants carrying out virtually identical assembly operations themselves and the other being the company referred to above, it was concluded that these subassemblies did constitute a substantial transformation as required by Article 5 of Council Regulation (EEC) No 802/68 (1). The assembly operation and the manufacture of the components carried out in the Community was of a substantial nature. The item was thus of Community origin.

(14) According the weighted average value of Japanese parts for all models produced by TEC-Keylard was found to be less than 60% of the total parts value.

E. Termination of the investigation

(15) In the circumstances, therefore, the investigation should be terminated without the extension of the anti-dumping duty, imposed on some electronic scales originating in Japan by Regulation (EEC) 1058/86 to electronic scales assembled in the Community with regard to TEC-Keylard.

(16) No objections to this course were raised in the Advisory Committee.

(17) The complainants were informed of the facts on the basis of which the Commission intended to terminate the investigation. The Commission however, received no evidence from the companies concerned to alter its conclusions,

HAS DECIDED AS FOLLOWS:

Sole Article

The investigation under Article 13 (10) of Regulation (EEC) No 2176/84 concerning electronic scales for use in the retail trade which incorporates a digital display of the weight, unit price and price to be paid (whether or not including a means of printing these data) falling within CN code ex 8423 81 50, originating in Japan, is hereby terminated with regard to TEC-Keylard Welgschalen Nederland BV.

Done at Brussels, 18 April 1988.

For the Commission
Willy DE CLERCQ
Member of the Commission

COMMISSION DECISION
of 18 April 1988

terminating the investigation under Article 13 (10) of Regulation (EEC) No 2176/84 concerning certain typewriters assembled or produced in the Community with regard to TEC Elektronik-Werk GmbH and Brother Industries (UK) Ltd

(88/226/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community ('), as amended by Regulation (EEC) No 1761/87 (5), and in particular Article 13 (10) thereof,

After consultations within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. Procedure

(1) In July 1987, the Commission received a complaint lodged by CETMA, the Committee of European Typewriter Manufacturers, on behalf of French, German and Italian producers of electronic typewriters whose collective output constitutes practically all Community production of the product in question. The complaint contained sufficient evidence to the effect that following the opening of the investigation on electronic typewriters originating in Japan (3), which led to the adoption of Council Regulation (EEC) No 1698/85 (4), imposing a definitive anti-dumping duty on imports of those products, a number of companies were assembling electronic typewriters in the Community under the conditions referred to in Article 13 (10) of Regulation (EEC) No 2176/84. After consultations, the Commission accordingly announced, by notice published in the Official Journal of the European Communities (5), the initiation of an investigation, under the said Article 13 (10), concerning electronic typewriters assembled in the Community by the following companies:

— Brother Industries (UK) Ltd, Wrexham, United Kingdom
— Kyushu Matsushita (UK) Ltd, Newport, United Kingdom
— Sharp Manufacturing Company of UK Ltd, Wrexham, United Kingdom
— Canon Bretagne SA, Liffre, France
— TEC Elektronik-Werk Gmbh, Braunschweig, Germany.

(2) The Commission so advised the companies concerned, the representatives of Japan and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(3) All the companies concerned as well as the complainants made their views known in writing, requested and were granted hearings by the Commission.

(4) No submissions were made by purchasers of electronic typewriters assembled in the Community. The Commission sought and verified all information it deemed necessary for the purpose of the assessment of the character of the alleged assembly operations and carried out investigations at the premises of the following companies:

— Astec Europe Ltd, Stourbridge, United Kingdom
— Brother Industries (UK) Ltd, Wrexham, United Kingdom
— Canon Bretagne SA, Liffre, France
— Kyushu Matsushita (UK) Ltd, Newport, United Kingdom
— Sharp Manufacturing Company of UK Ltd, Wrexham, United Kingdom.

Furthermore, the Commission carried out an investigation at the premises of a supplier of subassemblies to some of the companies involved. Because it is not directly involved in this investigation, this company requested that its name be withheld. Given the circumstances, this request appears to be justified.

(5) The period of investigation was from 1 January to 31 July 1987.
B. Relationship or association with exporter

(6) All companies referred to under point 1 were found to be wholly owned subsidiaries of Japanese exporters of electronic typewriters which are subject to the definitive anti-dumping duty imposed by Regulation (EEC) No 1698/85.

C. Production

(7) All companies started their assembly operations after the initiation of the anti-dumping proceeding concerning the imports of electronic typewriters originating in Japan on 24 March 1984.

TEC Elektronik-Werk GmbH

(8) TEC ceased assembling electronic typewriters in the Community before the beginning of the investigation.

D. Parts

(9) The value of parts used in the assembly was generally determined on the basis of the companies' purchase prices of these parts when delivered to the factories in the Community.

(10) It was found that, for all companies referred to under point 1, except TEC and Brother, the weighted average value of Japanese parts for all models produced was more than 60% of the total value of parts. Consequently and after taking into consideration the circumstances of each case, the extension of the anti-dumping duty imposed by Regulation (EEC) No 1698/85 to certain typewriters assembled in the Community by these companies referred to under point 1 except TEC and Brother.

Brother Industries (UK) Ltd

(11) Brother requested that cif values be used. This request had to be rejected since the relevant value is that of the parts and materials as they are used in the assembly operations, that is on an into-factory, duty-paid basis.

(12) Brother claimed that some subassembled items which were used for some models were of Community origin. It was found that these items were assembled in the Community, partly from parts imported from Japan. After investigation, it was concluded that some of these subassemblies did not fulfil the conditions of Article 5 of Council Regulation (EEC) No 802/68 (\(^{(*)}\)). The assembly operation carried out in the Community was of an unsubstantial nature compared with the manufacture of the components which was performed in Japan. These items thus not of Community origin.

(13) It was found however, that the weighted average value of Japanese parts for all models produced by Brother was less than 60% of the total value of parts.

E. Termination of the investigation

(14) In these circumstances, therefore, the investigation should be terminated without the extension of the anti-dumping duty with regard to TEC-Elektronik GmbH and Brother Industries (UK) Ltd.

(15) No objections to this course were raised in the Advisory Committee.

(16) The complainant was informed of the facts on the basis of which the Commission intended to terminate the investigation and did not comment,

HAS DECIDED AS FOLLOWS:

\textbf{Sole Article}

The investigation under Article 13 (10) of Regulation (EEC) No 2176/84 concerning electronic typewriters, whether or not incorporating calculating mechanisms falling within CN codes 8469 10 00, ex 8469 21 00, ex 8469 29 00 and ex 8470 90 00, originating in Japan, is hereby terminated with regard to TEC Elektronik-Werk GmbH and Brother Industries (UK) Ltd.

Done at Brussels, 18 April 1988.

\textit{For the Commission}

\textbf{Willy DE CLERCQ}

\textbf{Member of the Commission

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 18 April 1988
terminating the investigation under Article 13 (10) of Regulation (EEC) No 2176/84 concerning certain hydraulic excavators assembled or produced in the Community

(EEC) No 2176/84 concerning certain hydraulic excavators assembled or produced in the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), as amended by Regulation (EEC) No 1761/87 (2), and in particular Article 13 (10) thereof,

After consultations within the Advisory Committee as provided for under the above Regulation,

Whereas:

A. Procedure

(1) In September 1987, the Commission received a complaint lodged by the Committee for European Construction Equipment representing practically all Community production of the product in question. The complaint contained sufficient evidence to the effect that following the opening of the investigation on hydraulic excavators originating in Japan (3), which led to the adoption of Council Regulation (EEC) No 1877/85 (4) imposing a definitive anti-dumping duty on imports of those products, one company was assembling hydraulic excavators in the Community under the conditions referred to in Article 13 (10) of Regulation (EEC) No 2176/84. After consultation, the Commission accordingly announced, by notice published in the Official Journal of the European Communities (5), the initiation of an investigation, under the said Article 13 (10), concerning hydraulic excavators assembled in the Community by Komatsu (UK) Ltd, Birtley, County Durham, United Kingdom.

(2) The Commission so advised the company concerned, the representatives of Japan and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(3) The company concerned as well as the complainants made their views known in writing. They did not request hearings by the Commission.

(4) No submissions were made by purchasers of hydraulic excavators assembled in the Community. The Commission sought and verified all information it deemed necessary for the purpose of the assessment of the character of the alleged assembly operations and carried out investigations at the premises of Komatsu (UK) Ltd, Birtley, County Durham, United Kingdom.

(5) The period of investigation was from 1 January to 30 September 1987.

(3) OJ No C 201, 31. 7. 1984, p. 3.
B. Relationship or association with exporter

(6) The company referred to under point 1 was found to be a wholly owned subsidiary of the Japanese exporters of hydraulic excavators which are subject to the definitive anti-dumping duty imposed by Regulation (EEC) No 1877/85.

C. Production

(7) The company started its assembly operations after the initiation of the anti-dumping proceeding concerning the imports of hydraulic excavators originating in Japan on 31 July 1984.

D. Parts

(8) The value of parts and the ratio between Japanese parts of other origin were determined on the basis of the company's purchase prices of these parts when delivered to the factory in the Community, that is on an into-factory, duty-paid basis.

(9) Komatsu (UK) Ltd claimed that the direct manufacturing costs of an important part sub-assembled in its premises should be included in the Community parts value because the process of production was not simple assembly but a genuine manufacturing operation. This request, however, cannot be granted because the cost of assembly or production cannot be included in the value of parts or material used in the assembly or production operations but constitutes a value added to these parts or materials in the assembly or production process.

(10) Accordingly, the weighted average value of Japanese parts, for all models produced by Komatsu, was found to be less than 60% of the total parts value.

E. Termination of the investigation

(11) In these circumstances, therefore, the investigation should be terminated without the extension of the anti-dumping duty, imposed on some hydraulic excavators originating in Japan by Regulation (EEC) No 1877/85, to the hydraulic excavators assembled in the Community.

(12) No objections to this course were raised in the Advisory Committee.

(13) The complainant was informed of the facts on the basis of which the Commission intended to terminate the investigation and did not comment,

HAS DECIDED AS FOLLOWS:

Sole Article

The investigation under Article 13 (10) of Regulation (EEC) No 2176/84 concerning self-propelled hydraulic excavators, track-laying or wheeled, of a total operating weight exceeding six tonnes but not exceeding 35 tonnes, equipped with a single bucket mounted on a boom capable of pivoting through 360°, or intended to be so equipped, falling within CN codes ex 8429 52 00 and ex 8429 59 00, originating in Japan, is hereby terminated.

Done at Brussels, 18 April 1988.

For the Commission

Willy DE CLERCQ

Member of the Commission