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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1696/2002

of 23 September 2002

amending the Annex to Regulation (EC) No 2042/2000 imposing a definitive anti-dumping duty on imports of television camera systems originating in Japan

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1],

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

Whereas:

1. PREVIOUS PROCEDURES

(1) The Council, by Regulation (EC) No 1015/94 [2], imposed a definitive anti-dumping duty on imports of television camera systems (TCS) originating in Japan.

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

(3) In October 1995, the Council, by Regulation (EC) No 2474/95 [3], amended the abovementioned Regulation (EC) No 1015/94, in particular as regards the like product definition and certain models of professional camera systems which were explicitly exempted from the definitive anti-dumping duty.

(4) In October 1997, the Council, by Regulation (EC) No 1952/97 [4], amended the rates of the definitive anti-dumping duty for two companies concerned, namely for Sony Corporation and Ikegami Tsushinki in accordance with Article 12 of Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (hereinafter the basic Regulation). Furthermore, the Council specifically excluded from the scope of the anti-dumping duty certain new models of professional camera systems by adding them to the Annex.

(5) In January 1999 and 2000, the Council, by Regulation (EC) No 193/1999 [5] and Regulation (EC) No 176/2000 [6] amended Regulation (EC) No 1015/94 adding certain successor models of professional camera systems to the Annex and thus excluding those from the application of the definitive anti-dumping duty.

(6) In September 2000, the Council, by Regulation (EC) No 2042/2000 [7], confirmed the definitive anti-dumping duties imposed by Regulation (EC) No 1015/94 in accordance with Article 11(2) of the basic Regulation.

(7) In January 2001 and in May 2001, the Council introduced the latest amendments to Regulation (EC) No 2042/2000 by adding certain successor models of professional camera systems to the Annex and thus excluding them from the application of the definitive anti-dumping duty.

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[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 111, 30.4.1994, p. 106. Regulation as last amended by Regulation (EC) No 176/2000 (OJ L 22, 27.1.2000, p. 29).
[3] OJ L 255, 25.10.1995, p. 11.
[4] OJ L 276, 9.10.1997, p. 20.
[5] OJ L 22, 29.1.1999, p. 10.
[6] OJ L 22, 27.1.2000, p. 29.
[7] OJ L 244, 29.9.2000, p. 38. Regulation as last amended by Regulation (EC) No 951/2001 (OJ L 134, 17.5.2001, p. 18).

(8) Finally, in September 2001, the Council, by Regulation (EC) No 1900/2001 [1], further to an interim review in accordance with Article 11(3) of the basic Regulation, confirmed the level of the definitive anti-dumping duty imposed to the exporting producer Hitachi Denshi Ltd.

2. INVESTIGATION CONCERNING NEW MODELS OF PROFESSIONAL CAMERA SYSTEMS

2.1. Procedure

(9) Two Japanese exporting producers, namely Victor Company of Japan Limited (JVC) and Ikegami Tsushinki Co Ltd (Ikegami), informed the Commission on 17 April 2001 and 12 October 2001 respectively, that they intended to introduce new models of professional camera systems into the Community market and requested the Commission to add these new models of professional camera systems including their accessories to the Annex and thus exempt them from the scope of the anti-dumping duties.

(10) The Commission informed the Community industry accordingly and commenced an investigation limited to the determination of whether the products under consideration fall within the scope of the anti-dumping duties and whether the operational part of Regulation (EC) No 2042/2000 should be amended accordingly.

2.2. Models under investigation

(11) The applications received concerned the following models of camera systems, supplied with the relevant technical information:

(i) *JVC*

— remote camera control unit RM-P210E;

(ii) *Ikegami*

— camera head HDL-37E

— camera head HDL-10

— camera head HDL-40

— camera control unit MA-400

— camera control unit CCU-37

— camera control unit CCU-10

— remote control unit RCU-400

— remote control unit RCU-240A

— camera adapter CA-450.

All of the above models were presented as being part of professional camera systems dedicated to the professional video market.

2.3. Findings

(12) The Commission carried out a technical examination. It resulted from this analysis that, in spite of the technical development shown by these models, these are not sufficient to classify them as broadcast or television camera systems. Therefore, it was concluded that all of the models concerned should be excluded from the scope of the existing anti-dumping measures.

(13) The Commission informed the Community industry and the exporter of the TCS of its findings and provided them with an opportunity to present their views. On the basis of the Commission's findings and in the light of the fact that the interested parties did not object to the Commission's conclusions, all models and related equipment listed in recital 11 are considered as professional camera systems. It follows that they should be exempted from the application of the anti-dumping duty applicable on TCS originating in Japan, and the Annex should be amended accordingly.

(14) Subsequently to the disclosure of above findings, one exporting producer, namely Ikegami, requested that the camera models produced and exported by it should be retroactively exempted from the anti-dumping measures in force, irrespective the date of their importation. It was argued that since these models were found to be professional camera systems, the anti-dumping duty should not apply on imports made prior to the publication of the present Regulation.

(15) Camera systems listed in the Annex to Regulation (EC) No 2042/2000 can be considered as exempted from the duty, after it has been expressly determined that they cannot be used for broadcast purposes. Such determination can only be made after detailed examination by the Community institutions of the technical specifications of the camera system concerned and, accordingly, such camera systems can only be exempted from the application of the duty from the moment an affirmative decision to include the model in question in the Annex has been made. Being so, the exemption should in principle produce its effects for the future only, i.e. from the date of the publication of the revised Annex.

(16) However, in specific cases, the Community Institutions found it appropriate to exempt certain professional camera systems from the scope of the anti-dumping duty with retroactive effect. In these cases, the camera models under examination had been imported into the Community only between the moment of the request for exemption and the publication of the relevant amendment of the Annex. Consequently these transactions could be identified in the framework of the examination by the Commission. Under these particular circumstances it was considered acceptable not to levy the duty on such imports occurring after the application for the exemption.

(17) In the present case, retroactive effect is requested, irrespective of the date of first imports, and would hence cover imports that occurred prior to the request for exemption. The investigation revealed that certain camera models concerned were indeed imported already before an adequate request for exemption had been submitted to the Commission, although initially Ikegami claimed that no imports of the models subject to the request had taken place prior to such request.

[1] OJ L 261, 29.9.2001, p. 3.

(18) In view of the above, it is considered that retroactive effect cannot be granted to imports which took place before a request for exemption was made to the Commission. Exemptions can only be granted on the basis of an affirmative decision to include certain camera types in the Annex. Indeed the nature of the camera system in question cannot be determined prior to obtaining the technical specifications contained in the request for exemption. There is no possibility for the Commission and Member States Authorities to monitor the accuracy of CN classifications made by exporting producers in respect of camera models not yet brought to the Commission's attention. As a result, should exemption from the duty be granted retroactively to a date before the date of receipt of the application by the Commission, there would be no risk borne by exporting producers seeking to avoid payment of the duty by first importing their camera models under inappropriate CN codes, thus avoiding the duty, and then subsequently applying for an exemption from the date of first importation if and when the irregularities come to the authorities' attention. Hence, whilst requests for retroactive effect from the date of receipt of the application for exemption can be considered, it is not appropriate to extend retroactive effect to imports that have taken place before a request was made, taking account in particular of the serious risk of circumvention of the measures.

(19) Therefore, it is decided that imports of camera models of Ikegami subject to the present examination imported on a date on or after the date of receipt of the application for exemption, i.e. on or after 12 October 2001, should be exempted from the duty.

(20) For these same reasons, it is decided that camera models of JVC also subject to the present examination should be exempted from the duty from the date of receipt of the application for exemption by the Commission, i.e. from 17 April 2001,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex of Regulation (EC) No 2042/2000 is replaced by the Annex to this Regulation.

Article 2

This Regulation shall apply to imports of the following models produced and exported to the European Community by the following exporting producers from the date of the receipt by the Commission of the relevant request for exemption from the definitive anti-dumping duty for these models, as specified below:

(a) Ikegami Tsushinki Co Ltd from 12 October 2001:
- camera head HDL-37E
- camera head HDL-10
- camera head HDL-40
- camera control unit MA-400
- camera control unit CCU-37
- camera control unit CCU-10
- remote control unit RCU-400
- remote control unit RCU-240A
- camera adapter CA-450;

(b) Victor Company of Japan Limited from 17 April 2001:
- remote camera control unit RM-P210E.

Article 3

This Regulation shall enter into force on the day following that 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 Brussels, 23 September 2002.

For the Council
The President
M. FISCHER BOEL