II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 14 November 1988

repealing Decision 87/104/EEC accepting an undertaking given in connection with the anti-dumping proceeding concerning imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China and terminating the investigation

(88/576/EEC)

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 [1], and in particular Article 10 thereof,

Having regard to the proposal from the Commission, presented after consultations within the Advisory Committee as provided for under that Regulation,

Whereas :

A. Procedure

(1) Following a complaint lodged by the European Brushware Federation (Fédération Européenne de l'Industrie de la Brosserie et de la Pinceauterie — FEIBP) on behalf of Community producers in all Member States of paint, distemper, varnish and similar brushes whose collective output constitutes practically all Community production of the products in question, the Commission published a notice in the *Official Journal of the European Communities* [2], announcing the initiation of an anti-dumping proceeding concerning imports into the Community of paint, distemper, varnish and similar brushes falling within Common Customs Tariff subheading ex 96.01 B III (corresponding to NIMEXE code 96.01-49 and, from 1 January 1988, to CN code 9603 40 10) and originating in the People's Republic of China ; it then commenced an investigation.

(2) Following the investigation, which established the existence of dumping and injury, the Chinese firm China National Nature Produce & Animal By-Products Import & Export Corporation offered an undertaking limiting the quantities exported to the Community.

(3) Under the terms of the undertaking, the abovementioned firm undertook to reduce its exports to such an extent that the injury suffered by the Community industry would be eliminated. By Decision 87/104/EEC [3], the Council accepted the undertaking.

(4) In May 1988 the Commission received information suggesting that Chinese exports in 1987 to the Federal Republic of Germany and the United Kingdom alone far exceeded the maximum allowed for the Community as a whole in that year under the terms of the exporting firm's undertaking.

(5) The Commission examined the information brought to its attention and heard the Chinese exporter.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 103, 30. 4. 1986, p. 2.
[3] OJ No L 46, 14. 2. 1987, p. 45.

B. **Failure to comply with the undertaking**

(6) The Commission carried out an initial verification of the alleged facts using the official statistics available. Those statistics indicate that the undertaking has indeed been broken. They confirm that imports of the product concerned from the People's Republic of China into Germany and the United Kingdom alone far exceed the overall quantity laid down in the undertaking for the Community as a whole; the United Kingdom authorities also supplied evidence that certain Chinese exports were transiting through Hong Kong, thus increasing the overall volume of exports originating in China, which amounts in this way to nearly twice that allowed under the undertaking.

(7) The Chinese exporter claims that the quantities exported to the Community do not exceed the limits laid down in the undertaking. In support of this claim it supplied figures which do not, however, agree with those obtained from the Community importers, nor with those found in the official statistics referred to above, and do not include Chinese exports transiting through Hong Kong. The Chinese exporter was unable to put forward convincing arguments to refute the data obtained by the Commission. It should be noted that under the terms of the undertaking accepted by the Council, the exporter undertook to comply with the quantities laid down, whether by direct or indirect exports, or through a subsidiary company, branch or agent.

(8) The Commission therefore has detailed evidence showing that the Chinese producer's exports to the Community, whether direct or transiting through a third country, far exceed the annual figures laid down in the undertaking.

C. **Withdrawal of acceptance of the undertaking**

(9) The Council considers that under these circumstances Decision 87/104/EEC should be repealed and that a new examination of the facts is warranted,

HAS DECIDED AS FOLLOWS:

Sole Article

Decision 87/104/EEC is hereby repealed.

Done at Brussels, 14 November 1988.

For the Council,

The President

Y. POTTAKIS