# COMMISSION DECISION

**of 22 May 1990**

**accepting undertakings given in connection with the anti-dumping proceeding concerning imports of photo albums originating in South Korea and Hong Kong, and terminating the investigation**

(90/241/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1] and in particular Article 10 thereof,

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

Whereas :

## A. PROCEDURE

(1) In September 1988 the Commission received a complaint lodged by the Committee of European Photo Album Manufacturers (Cepam) on behalf of producers representing the majority of Community production of the photo albums concerned. The complaint contained evidence of dumping of the product concerned originating in South Korea and Hong Kong and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice in the *Official Journal of the European Communities* [2], the initiation of an anti-dumping proceeding concerning imports into the Community of photo albums falling within CN codes ex 4820 50 00, ex 3919 90 10 and ex 3926 90 91, originating in South Korea and Hong Kong and subsequently commenced an investigation.

(2) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting countries and the complainants and gave the parties concerned the opportunity to make known their views in writing and to request a hearing.

All exporters concerned had the opportunity to exercise their right provided for in Article 7 (4) of Regulation (EEC) No 2423/88 and have partially done so.

(3) Some of the South Korean exporters and the only known Hong Kong exporter made their views known in writing. The Korean Stationery Industry Cooperative (a division of the Federation of Small and Medium Industries of Korea) prepared a separate submission on behalf of all photo album manufacturers in Korea. The Hong Kong Government Office in Brussels made representations on behalf of the Hong Kong exporters in writing and had an opportunity to inspect the information made available to the Commission and to comment thereon. Some importers, dealers and organizations representing Community purchasers and all complainant Community producers submitted a detailed response to the Commission's questionnaire. A considerable number of submissions from dealers and importers were made outside the time limit (Article 7 (7) (b) of Regulation (EEC) No 2423/88) but the Commission was still able to take them into account.

Some of the South Korean exporters, the Korean Stationery Industry Cooperative, the representatives of the Hong Kong Government, some importers and the complainants have requested and have been granted hearings.

(4) The Commission sought and verified all information it deemed necessary for the purpose of establishing the facts and carried out investigations at the following premises :

*EEC producers :*

— Walter Aulfes GmbH, Germany,

— Ludwig Fleischmann GmbH & Co KG, Germany,

— Henzo BV, The Netherlands,

— Holson GmbH, Germany,

— Karl Walter GmbH & Co KG, Germany.

These Community producers are all members of Cepam.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 322, 15. 12. 1988, p. 9.

*South Korean exporters:*

— Dong In Industrial Co. Ltd, Seoul,

— Young Stationery Ltd, Seoul,

— The More Stationery Ltd, Seoul.

These exporters are members of the Korean Stationery Industry Cooperative.

*Importers in the Community:*

— Porst AG, Germany,

— Rheita-Krautkrämer GmbH, Germany,

— KLS Service — Non-Food-Vertriebsgesellschaft GmbH, Germany,

— Web International Ltd, United Kingdom.

The Commission requested and received detailed written submissions from the complainant Community producers, the abovementioned exporters and a number of importers, and verified the information therein to the extent considered necessary.

Because of the large number of interested parties involved, the number of hearings which had to be granted and the extension of time limits requested by all exporters, the time for completion of the investigation exceeded a 12-month period.

(5) The investigation of dumping covered the period from 1 December 1987 to 30 November 1988 (investigation period).

## B. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT AND COMMUNITY INDUSTRY

### 1. Product under consideration

(6) The product concerned is defined in the notice of initiation of the anti-dumping proceeding and is referred to as photo albums.

(7) The investigation showed that photo albums are actually supplied in three different types or categories:

— category 1: traditional photo albums,

— category 2: self-adhesive photo albums,

— category 3: flip-up albums, slip-in albums and similar types of photo albums.

(8) The first category of traditional albums are book-bound or post-bound consisting of cardboard leaves and pergamyn interleaves.

(9) The second category of self-adhesive albums are book-bound, spiral-bound or post-bound with self-adhesive leaves consisting of cardboard with a glue layer and a transparent foil. Self-adhesive filler pages for photo albums, loose or in form of book blocks, also fall into this category.

(10) The third category of flip-up, slip-in and similar albums are photo albums with different bindings (spiral binding, ring spring-clip, post binding or similar bindings). These photo albums can be identified because photos can be stuck in prefabricated transparent foil pockets. The block of this type of photo album is partly high-frequency welded and partly produced on paper basis with glued-on transparent foil. The pockets of flip albums have to be arranged in an overlapping order.

(11) The products concerned in the investigation fall within the following CN codes:

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|---|---|
| — categories 1, 2 and 3: | ex 4820 50 00 |
| — categories 2 and 3: | ex 3926 90 91 |
| — category 3: | ex 3919 90 10. |

The classification of categories 2 and 3 under CN codes ex 4820 50 00 or ex 3926 90 91 and ex 3919 90 10 depends on the degree of plastic material used and contained in the finished product.

### 2. Like product and Community industry

(12) The Commission established that the photo albums produced and sold in Hong Kong and Korea, those exported to the Community from these countries and the photo albums produced in the Community are like products within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88. The great variety in design, format, materials used and binding procedures does not change the basic physical characteristics of the products under consideration to the extent that clear definitive lines exist between the various types of albums.

(13) Certain exporters contested this view of the Commission and claimed that the photo albums which are the subject of the investigation consist of three different products and have requested that a clear distinction should be made between the three categories of photo albums because they do not have the same characteristics and should therefore not be considered as like products.

The reasons advanced are that traditional albums, self-adhesive albums and flip-up or slip-in albums have different physical characteristics with regard to materials used, the binding procedure, sizes and design. It was further claimed that certain manufacturing procedures are different according to the album type and that because of relatively stable consumer preferences the interchangeability of the different album types is rather low.

(14) The arguments advanced in the Commission's opinion are not sufficient to allow the segregation of the market for photo albums into three separate segments of different products which would require, as claimed by the exporters, a division of the Community industry into three different sectors.

In the Commission's opinion the photo albums under consideration are like products because irrespective of differences in materials used, in design and sizes they have closely resembling characteristics, are products of the same general category and have a unique use, i.e. to file photos on sheets or in pockets bound together in a cover which cannot be substituted by any other similar product. There is no doubt that all photo albums under consideration are interchangeable for this purpose. In this context, it is not relevant that some consumers show preferences for one and other consumers for other types of albums. Suppliers are thus obliged to offer the whole range of products in an adequate design in order to cover the whole consumer market for photo albums.

(15) In conclusion the Commission considers that the photo albums under consideration are like products which constitute a clearly identifiable market on which the dumped imports compete with each other and the Community products. The term Community industry is accordingly interpreted by the Commission as referring to the complainant companies producing and marketing the like product in the Community. The Commission has verified that the Community producers on behalf of which the complaint was lodged represent about 80 % of the total Community output of the like product.

(16) The Commission also had to consider that some of the complaining Community producers had imported substantial quantities of the dumped products themselves during the reference period and had to assess whether the definition of the Community industry concerned should be restricted only to the remainder of the Community producers who had not imported the photo albums in question themselves.

(17) The Commission's investigation revealed that the imports of photo albums by certain Community producers mainly concerned the lower-end product lines of cheap albums of the self-adhesive and flip or slip-album types which were imported into the Community from Hong Kong and Korea at dumped prices which were considerably lower than the cost of production of the Community producers in question. It was also found that the products in question have not been resold in the Community by the producers concerned at prices by which they did unduly benefit from the dumped imports. Under these circumstances the Commission is of the opinion that it was therefore not unreasonable for the Community producers concerned to import the dumped goods in order to protect themselves against dumped sales by other importers and to minimize their financial losses and maintain their market share.

(18) This situation also confirms that all types of photo albums belong to an inseparable market requiring a supplier to offer the whole product range. Therefore, the lower-end products were still manufactured in the Community although at a sharply reduced level and sold at loss-making prices because of the price depression caused by the dumped imports from South Korea and Hong Kong.

(19) The Commission is therefore of the opinion that these imports were made in order to defend the complainants' own market position against low-price offers from South Korea and Hong Kong and that there is no justification to exclude the complainants as Community producers in the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

## C. NORMAL VALUE

### 1. South Korea

(20) The photo albums sold on the South Korean domestic market differ somewhat in size, outfit and appearance and thus did not permit a proper comparison with those exported to the EEC. The production is made to specific order and the material, size, design etc. differ considerably for each order and customer. In addition the Korean domestic market requires a more sophisticated type of album that includes special equipment, e.g. cases, sticker pads, registers, more expensive cover material etc. This kind of outfit accounts for considerable extra costs for the domestic models. Therefore, instead of making rather imprecise adjustments to the domestic sales prices, it was decided to construct normal value on the basis of cost of production of the products exported to the Community. Normal value was established for every individual model and for every export contract separately, on a transaction-by-transaction basis.

(21) The constructed normal value was determined by adding to the cost of production, on the basis of all costs, a reasonable margin of profit. The amount for selling, general and administrative expenses and profit was calculated by reference to the expenses incurred and the profit realized by the Korean producers on the domestic market (Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88).

(22) With regard to the profit margin to be added to the cost of production certain Korean exporters claimed that export sales of photo albums from Korea to the Community are made on an OEM (original equipment manufacture) basis and that therefore a reduced profit margin, taking account of this particular situation, should be allowed by the Commission. The following arguments were advanced :

— export sales are made to very detailed Community customer specifications such as size, capacity, colour, design, materials, labels, packing etc.,

— export sales are essentially factory sales for which no distribution or advertising costs are incurred,

— resales are made under the customer's own brand name,

— EC export sales involve high-volume transactions.

(23) The Commission formed the opinion that the factors mentioned are characteristics of the great majority of export transactions and do not sufficiently distinguish the sales of the photo albums concerned in order to qualify for the application of the OEM concept which the Commission applied in certain previous cases. These specific conditions involved the commercialization of technologically advanced electronic products with high brand profiles and which in the Commission's opinion are not at issue in respect of photo albums.

In establishing constructed normal value in these previous cases the Commission has applied a reduced OEM profit margin where export sales were made to Community companies which generally had a manufacturing activity or which had ceased such activity.

The purpose of these purchases has generally been to complete or to replace the OEM manufacturing activity of the original equipment manufacturers because these products were offered at prices below their production cost in the Community. The imported products have then been resold in the Community as own-products of the OEM under its established brand name, assuming the full responsibility of a manufacturer with regard to guarantee, warranties, after sales service, maintenance, supply of spare parts and repairs, the product thus being clearly identified as individual produce of the OEM and distinguished from all other products of the same kind.

However, with regard to the importers of the photo albums under consideration, these importers assume a mere trading function, none of them being or having been involved in a manufacturing activity of photo albums. In particular, the mere fact that the photo albums are sold in the EC under the importer's company name does not sufficiently distinguish these photo albums from all others whether originating in Korea, Hong Kong or produced in the Community. There is no indication that the importers concerned sell their own product under an established brand or trade mark which clearly differentiates their merchandise from all other photo albums in the market. The high fungibility of the products, the normal commercial activity of the importers, which does not distinguish them from any other supplier of photo albums, and the interchangeability of the products from different sources in the consumer's perception are factors which in the Commission's opinion exclude the application of the OEM concept to such imports.

(24) Consequently, the Commission takes the view that the export sales from South Korea to the Community are not sales made on an OEM basis and that there is no justification to allow in any way for differences in cost or profit in establishing normal value.

### 2. Hong Kong

(25) In order to establish normal value for Hong Kong, the only Hong Kong exporter known to the Commission was contacted. The response to the Commission's questionnaire was incomplete and did not permit the establishment of normal value either on the basis of sales of the like product on the domestic market or on the basis of all costs. The exporter also refused on-the-spot verification and completion of the information submitted. No other Hong Kong exporters reacted to the Commission's publication of the initiation of the anti-dumping proceeding in the Official Journal or made their views known in writing. Therefore, as no sales could be established on the domestic market, the Commission decided to use best available evidence and construct the normal value in accordance with Article 2 (3) (b) and Article 7 (7) (b) of Regulation (EEC) No 2423/88. For this purpose the Commission had to rely partially on information submitted by the complainants, which was however adjusted and completed by information which was obtained during the course of the investigation.

## D. EXPORT PRICES

(26) The Korean export prices for every export model and transaction to independent Community customers were determined on the basis of the prices actually paid or payable.

(27) The only Hong Kong exporter known had submitted a list of his export prices to the Community. The Commission was prepared to use this information but as on-the-spot verification was not made possible by the exporter, the Commission requested and obtained additional information from Community importers. The information obtained from these importers was used in particular to cross-check the invoiced export prices (puchase prices of the importer) with adjustments for freight, insurance and other transport costs as well as for payment terms.

On this basis, export prices were established for representative export models and transactions to independent Community customers.

## E. COMPARISON

(28) Normal values and export prices of the Korean exporters were adjusted to net ex-works level in order to take account of conditions and terms of sale and were compared on a transaction-by-transaction basis.

Comparing normal value and export prices the Commission granted allowances which had been requested for differences in directly related selling expenses such as transport, insurance, handling and ancillary costs and for cost differences resulting from design and packing of the albums concerned and varying credit terms.

(29) For the Hong Kong exporter the normal values and export prices were compared ex-works at the same level of trade. The Commission took account, when circumstances permitted and where sufficient evidence was available, of differences affecting price comparability, including transport and insurance costs and payment schedules.

## F. MARGINS

(30) This comparison revealed for South Korea that the prices for most export transactions were below normal value. The dumping amounts (difference between normal value and export price) were aggregated for all export transactions and for all photo album models. The total weighted average dumping margins expressed as a percentage of the exporter's 'cif Community border' export price, are outlined hereunder by exporters :

— Young Stationery Ltd : 9,3 %

— The More Stationery Ltd : 16,7 %

— Dong In Industrial Co. Ltd : 10,2 % .

(31) The corresponding dumping margin established for the Hong Kong exporter is as follows :

— Climax Paper Converters Ltd : 24,8 %.

## G. INJURY

(32) The volume of imports from South Korea increased from 11 947 tonnes in 1985 to 18 716 tonnes in 1988 and from Hong Kong from 1 207 tonnes in 1985 to 3 490 tonnes in 1988.

Cumulated imports from South Korea and Hong Kong increased from 13 154 tonnes in 1985 to 22 206 tonnes in 1988 corresponding to an increase of 69 % over that period.

The Hong Kong exporter claimed that the impact of its exports to the Community should be examined separately and that because of their low respective volume in the Community market, they did not cause material injury.

(33) In considering whether cumulation was appropriate, the Commission took account of the comparability of the products imported in terms of physical characteristics, import volumes, the increase in those volumes by comparison with a reference period, the low price level of the products exported by all the exporters in question and the extent to which each imported product competed in the Community with the like product of the Community industry. On the basis of its analysis, the Commission believed that the dumped imports from Hong Kong in question could be considered to contribute to the material injury caused to the Community industry, and that those imports took place under such conditions that if the Commission were to treat one exporter separately, it would be discriminating against the others. The Commission therefore concluded that, in order to establish the level of injury caused to the Community industry, it was appropriate to consider the overall effect of all dumped imports from both South Korea and Hong Kong.

(34) The corresponding market shares increased from 49,7 % in 1985 to 58,2 % in 1988 for South Korea and from 5 % to 10,8 % for Hong Kong in the same period. The cumulated market shares of the imports under consideration increased from 54,7 % in 1985 to 69 % in 1988.

(35) The Commission established price undercutting by comparing the Korean export prices of the albums with the corresponding albums of the Community producers. The comparison was carried out at the same level of trade (cif Community border, customs cleared) by using weighted average prices for all photo albums of Korean and European production.

The price undercutting margins established for the three Korean companies are :

— Young Stationery Ltd : 47 %

— The More Stationery Ltd : 13,2 %

— Dong In Industrial Co. Ltd : 68 %.

(36) For exports from Hong Kong the calculation was done on the basis of selected export models and transactions that could be established during the investigation period. As a result, the most representative sales prices of photo albums of Hong Kong (cif Community border, customs cleared) and European production (ex-works) were compared. The weighted average price undercutting margin thus established amounts to 30,9 %.

(37) As far as the situation of the Community industry is concerned, the Commission found a decrease in market share of the main EEC producers from 26,4 % to 21,1 % during the period 1985 to 1988. In the same period the corresponding combined market shares of Korean and Hong Kong exporters increased from 54,7 % to 69 %.

(38) The low price level of the products under consideration has significantly jeopardized the recovery of Community production. A moderate increase in Community production of 6,8 % between 1985 and 1988 is to be measured against a growth in Community consumption of 33,9 % over the same period. As a result at least nine Community producers in Belgium, France and the United Kingdom went bankrupt or had to abandon the producton of photo albums during the last few years. The consequent impact on the remaining Community producers was a decline in market share, increasing financial losses or a reduction in profits.

(39) Since the photo album market is a price sensitive market, the low prices at which the photo albums of Korean and Hong Kong production were sold in the Community, undercutting Community producers, combined with a substantial increase in market share, caused clearly the price depression on the Community photo album market. Community producers were forced either to make sales at a loss or to reduce their sales.

(40) The Commission has also considered whether injury might have been caused by factors other than the dumped imports. It was found that imports from other third countries were steadily decreasing in the period 1985 to 1988 as opposed to the increasing imports from South Korea and Hong Kong.

Besides the decrease in volume and market share, it was also found that these imports were made at considerably higher prices than in the case of South Korea and Hong Kong and that there was no indication of these imports being dumped.

(41) The increased level of dumped imports and in particular the low prices which undercut the prices of Community producers contributed significantly to the sharp decrease in sales of Community producers and their considerable loss of market share. The necessity to align their prices also caused heavy financial losses to Community producers. The Commission therefore considers that the dumped imports of photo albums from South Korea and Hong Kong taken in isolation are causing material injury to the Community industry.

## H. COMMUNITY INTEREST

(42) In assessing whether it is in the interest of the Community to take measures against dumped imports, the Commission considers that since a substantial number of producers in Belgium, France and the United Kingdom have ceased to exist and the profit situation of the remaining producers is deteriorating, the existence of this industry is at risk. The photo album industry, with a total turnover of ECU 30 million in 1988, essentially consists of small and medium-sized enterprises largely situated in structurally weak areas of the Community with overproportionate unemployment. Important investments have been made in the last few years which are jeopardized by the low-priced dumped imports from South Korea and Hong Kong. In the case of disappearance of the photo album industry the upstream industry, i.e. suppliers of paper, board, PVC foils etc., would also be affected and would suffer a consequent decrease in demand.

(43) Importers, dealers and associations of department stores have forwarded their objections to any protective measures against imports from South Korea and Hong Kong. They state that, if anti-dumping measures were taken, consumer prices would necessarily have to be increased to the detriment of both the importers and the final customers. Furthermore, they express the view that the remaining Community producers would not be capable of meeting the increased demand as a result of the imposition of protective measures.

The arguments forwarded by the importers have been considered by the Commission insofar as certain photo albums of categories 2 and 3 are concerned. An analysis of the current situation reveals that the market supply by the Community industry of cheap non-book-bound photo albums of both categories 2 and 3 is insufficient and that therefore a shortage in overall supply would have to be expected if protective measures were taken with respect to these products.

The Commission is of the opinion that, in the given circumstances, on balance, the consumer interest takes precedence over the interest of the Community industry and has therefore decided to limit protective measures to book-bound albums of category 1 and those albums of category 2 which are book-bound.

(44) In conclusion it is considered that it is in the interest of the Community to take anti-dumping measures being sufficient to eliminate the injury caused by the dumped imports. For the reasons outlined above these measures are limited to book-bound photo albums of categories 1 and 2 and sheets for the respective photo albums.

## I. UNDERTAKINGS

(45) Having regard to the injury caused, the Commission intended to impose provisional duties at a rate adequate to remove the injury caused but not exceeding the dumping margins established. A rate equivalent to the price undercuttings found for each exporting country was considered as sufficient to remove the injury caused by imports of photo albums originating in South Korea and Hong Kong. Indeed, the removal of the substantial price undercutting should allow the Community industry also to increase its prices, thus to improve considerably its financial situation, to remain in the market or even increase its production and overall market share.

Having been informed of the essential facts and considerations on the basis of which it was intended to take protective measures, all the South Korean and Hong Kong exporters concerned offered price undertakings concerning the exports of book-bound traditional and self-adhesive photo albums of category 1 and category 2 falling under CN code ex 4820 50 00.

The Commission regards these undertakings as acceptable, considering that the effect of these undertakings will be to increase the prices of the products concerned to an extent sufficient to eliminate the margins of dumping. It appears that correct operation of the undertakings can be effectively monitored in particular in view of the participation of the Korean Stationery Industry Cooperative.

The Advisory Committee has been consulted on this course of action and has raised no objections.

Moreover the Commission notes that in case of violation of these price undertakings it can impose provisional duties according to Article 10 (6) of Regulation (EEC) No 2423/88 and the Council subsequent definitive duties based on the facts established in the present investigation and without carrying out new investigations concerning dumping and injury resulting therefrom,

HAS DECIDED AS FOLLOWS:

*Article 1*

The undertakings offered by:

1. Chin Sung Ind Co. Ltd
2. Eun Jin Industrial Co. Ltd
3. Korea Enterprise Co. Ltd
4. Young Stationery Ltd
5. Chung Woo Ind Co. Ltd
6. The More Stationery Ltd
7. Hankook Trading Co. Ltd
8. Dongin Ind Co. Ltd
9. Daeho Industries Corporation
10. Hansang Industrial Co. Ltd
11. KMB Industries Corporation
12. Samwang Ind Co. Ltd
13. Woomi Ind Co. Ltd
14. Donam Ind Co. Ltd
15. Shinia Ind Co.
16. Young Sung Ltd
17. Raf Korea Ind Co. Ltd
18. Eunsung Ind Co.
19. Samjin Industrial Co. Ltd
20. Dae Myung Ind Co.
21. Little Prince Gift Co.
22. Shin Song Co.
23. Dae Sung Corporation
24. Sevenstar Industrial Co.
25. Daesin Ind Co.
26. Samwoo Trading Corporation
27. Sungshim Industrial Co. Ltd
28. Korea Trading Co. Ltd

29. Daewoo Corp.
30. Sambang Trading Co. Ltd
31. Yuhan Incorporated
32. Seyang Ploymer Co. Ltd
33. C & G Corporation
34. Saeron Plastics Co. Ltd

all in South Korea,

and :

Climax Paper Converters Ltd, Hong Kong,

in connection with the anti-dumping proceeding concerning imports of photo albums falling under CN code ex 4820 50 00 and originating in South Korea and Hong Kong are hereby accepted.

*Article 2*

The investigation in connection with the anti-dumping proceeding concerning imports of photo albums originating in South Korea and Hong Kong is hereby terminated.

Done at Brussels, 22 May 1990.

*For the Commission*

Frans ANDRIESSEN

*Vice-President*