II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 18 May 1993

terminating the anti-dumping proceeding concerning imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China

(93/325/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 9 thereof,

After consultation within the advisory Committee as provided for by the above Regulation,

Whereas :

A. PROCEDURE

(1) In April 1986 the Commission received a complaint lodged by the 'Fédération européenne de l'industrie de la brosserie et de la pinceauterie' on behalf of Community producers of paint, distemper, varnish and similar brushes whose collective output constitutes practically all Community production of the product in question. The complaint contained evidence of dumping 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 paint, distemper, varnish and similar brushes falling within Common Customs Tariff subheading ex 96.01 B III and corresponding to NIMEXE code 96.01-49, originating in the People's Republic of China and commenced an investigation.

(2) In the course of this proceeding the Chinese exporters offered an undertaking which was accepted. The Commission established that this undertaking was violated by the Chinese exporters and subsequently the Council imposed definitive anti-dumping duties by Regulation (EEC) No 725/89 [3].

(3) Council Regulation (EEC) No 725/89 was ruled invalid by the Court of Justice in its judgment of 22 October 1991 [4].

Following the Decision of the Court of Justice, the Commission resumed the investigation and published to that effect a Notice in the *Official Journal of the European Communities* [5].

(4) The Commission officially advised the exporters and importers known to be concerned and the complainant. Parties directly concerned were given the opportunity to make their views known in writing and to request a hearing.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 103, 30. 4. 1986, p. 2.
[3] OJ No L 79, 22. 3. 1989, p. 24.
[4] Case C-16/90, Nölle v. *Hauptzollamt Bremen-Freihafen*, [1991] ECR I-5163.
[5] OJ No C 24, 31. 1. 1992, p. 3.

(5) Representatives of the exporters, the complainant and several importers made their view known in writing. Some exporters requested and were granted a hearing.

(6) The Commission sought and verified the information it deemed to be necessary for the purposes of the investigation and carried out investigations at the premises of the following:

(a) *Community producers:*

— Bechtloff KG, Burk, Germany,

— Führ & Söhne Pinselfabrik GmbH, Bechhofen, Germany,

— Gebr. Schabert GmbH, Dinkelsbühl, Germany,

— Hamilton Acorn Ltd, Attleborough, United Kingdom,

— Mosley-Stone Ltd, Leeds, United Kingdom,

— Franpin SA, La Capelle, France,

— Pennellificio Gava & C. SpA, San Vendemiano, Italy,

— Pennellificio Pol Gianfranco, San Vendemiano, Italy,

— VE.S.P.A. SRL, San Pietro de Feletto, Italy;

(b) *Importers in the Community:*

— Charles Bentley & Son, Loughborough, United Kingdom,

— WMS Group Ltd, Brighouse, United Kingdom.

(7) The period selected for the investigation of dumping and of the effects of the allegedly dumped imports in the Community market ran from 1 January to 31 December 1991. The establishment of a new investigation period, immediately prior to the date of publication of the Notice resuming the investigation, was require in order to update the information available and to collect new data concerning both dumping and injury. The previous investigation period used in the proceeding ran from 1 July 1987 to 31 August 1988.

(8) This last stage of the investigation has exceeded the normal time period because of the large number of Community producers involved.

B. COMMUNITY INDUSTRY

(9) As indicated in recital 1 above, the complainant represented nearly all Community output of the product in question and could therefore be considered as the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88. The Commission, in view of the large number and the relatively small size of many of the producers involved, did not ask all Community producers to reply to a complete questionnaire and selected 25 firms to which full questionnaires were sent. This selection was done on the basis of size and geographical location and 25 firms of small, medium and large size located in eight Member States were chosen. The collective output of these firms exceeded 65 % of total Community production and were considered representative of the Community industry as a whole.

C. PRODUCT UNDER CONSIDERATION LIKE PRODUCT

(10) The products under investigation are paint, distemper, varnish and similar brushes, falling within CN code 9603 40 10 (hereinafter referred to as 'paint brushes'). Paint brushes are marketed with a wide range of sizes, models, forms, qualities and prices. No clear distinction can be made, however, between the various models. All models concerned possess basic common physical and technical characteristics which place them within the same category of like product.

(11) The imported paint brushes have the same physcial characteristics and uses and are alike to or closely ressembling in all respects to those produced by the Community industry.

D. INJURY

1. Volume of Community market and market shares of allegedly dumped imports

(12) The total consumption of paint brushes in the Community market increased from 171 million units worth ECU 110 million in 1988 to 186 million units worth ECU 129 million in 1991.

Sales of paint brushes originating in the People's Republic of China decreased in the same period from 62 million units and ECU 9,4 million to 28 million units and ECU 4,1 million.

Thus, the market share of the imports originating in the People's Republic of China decreased from 36,2 % in 1988 to 15,3 % in 1991 in terms of volume and from 8,5 % in 1988 to 3,2 % in 1991 in terms of value.

2. Prices of imports

(13) The prices of the paint brushes imported from the People's Republic of China were found to be consistently below the prices practised by the Community producers.

3. Situation of the Community industry

(a) *Production, capacity, utilization and stocks*

(14) The production of the Community industry developed from 126 million units in 1988 to 155 million units in 1991 which represents an increase of over 23 % in a period in which the market, as explained in recital 12, grew by nearly 9 %. Due to the substantial increase in capacity in the period considered, capacity utilization decreased from 77 % in 1988 to 69 % in 1991.

As far as stocks are concerned, they were reduced from 17,3 million units in 1988 to 15,8 million units in 1991.

(b) *Sales and market share*

(15) Sales of the Community industry in the Community market increased both in volume and value during the period considered, from 96 million units and ECU 96 million in 1988 to 127 million units and ECU 116 million in 1991.

As to the market share of the Community industry in the same period it also increased from 56,1 % to 68,4 % in terms of volume and from 87,6 % to 89,6 % in terms of value.

(c) *Prices*

(16) Because of the very large number of models being sold, the information available concerning the evolution of prices is not conclusive. Indeed, although a comparison of total sales in volume and value terms shows a general price decrease of 9 % from 1988 to 1991, verified information concerning the best selling models of the Community industry showed a price increase of 8 % over the same period. Thus, the general decrease in prices appears to be due more to changes in the product mix than to a declining trend in prices. This would explain the limited impact of the general decrease in prices on the profitability of the Community industry.

(d) *Profitability*

(17) The profits and the complainant industry, which had been declining before 1988, subsequently recovered. Although the profitability decreased slightly in 1991 with respect to the previous year, it can still be considered as satisfactory in view of the type of product and of the technology involved.

(e) *Investment and employment*

(18) The Community industry carried out substantial investments in the period 1988 to 1991 resulting in increased capacity (see recital 14) and improved efficiency. As regards employment, there was a moderate increase in the same period in contrast with a reduction in employment before 1988.

4. Conclusions on injury

(19) The overall situation of the Community industry was positive during 1991. Since 1988 the Community producers have been able to increase their production considerably. Their sales both in terms of volume and value have increased by more than 20 % while they have maintained their profitability at a level which can be considered acceptable. As regards employment, investments and stocks, there are positive developments during the period considered.

The exports from the People's Republic of China to the Community have declined substantially since 1988. Thus, in 1991, the market share of the Chinese imports in the Community market accounted for 3,2 % in terms of value or 15,3 % in terms of volume by comparison to 8,5 % and 36,2 % respectively in 1988.

The Commission has noted that, during the period investigated, imports from other third countries, often at very low prices, have entered the Community market increasing considerably their market share and that, although no measures against imports from these countries were in force, this increase has not prevented the Community industry from maintaining a quite healthy situation. This shows that imports from China have been mainly replaced by cheap imports form other sources without harming the Community industry.

In the light of these findings, the Commission has concluded that the Community industry has not suffered material injury, within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88, as a consequence of imports of the product under consideration from the People's Republic of China.

E. THREAT OF INJURY

(20) The Commission has considered the fact that, during most of the investigation period and in the preceding years anti-dumping measures were in force. Taking this fact into account, the Commission has examined whether a threat of injury to the Community industry exists and whether material injury to the Community industry would be likely to occur should no measures be taken.

The Commission has no indication that production capacity in China has increased. Evolution of export sales since 1988 has shown that some of the market share lost by Chinese exporters has been gained by a number of Asian exporting countries.

The tendency in the market seems to indicate that, should this market share revert to the Chinese exporters, it would be to the detriment of the other Asian exporting countries and that the market share of the Community producers would not be significantly affected. No other factors showing any threat of injury to the Community industry have been found.

(21) For these reasons, the Commission considers that, in the present situation, injury is not imminent and clearly foreseeable, and that the adoption of anti-dumping measures is therefore not justified.

In reaching this conclusion, the Commission has taken into account the fact that the Community industry has achieved a sufficiently healthy situation to allow it to withstand the impact or any likely increase in Chinese imports. Furthermore, if dumping and injury were to recur in the near future the Community industry may again lodge a complaint and request the opening of a proceeding which the Commission would carry out expeditiously.

F. DUMPING

(22) In view of the conclusions reached by the Commission concerning the lack of injury or threat of injury, the Commission did not consider it necessary to further consider any dumping issues.

G. TERMINATION OF THE PROCEEDING

(23) Accordingly, the anti-dumping proceeding concerning imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China should be terminated without protective measures being imposed.

(24) No objections to this conclusion were raised in the Advisory Committee.

(25) The complainant and the other parties concerned were informed of the essential facts and principal considerations on the basis of which the Commission intended to terminate the proceeding and did not object,

HAS DECIDED AS FOLLOWS:

Sole Article

The anti-dumping proceeding concerns imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China is hereby terminated.

Done at Brussels, 18 May 1993.

For the Commission

Leon BRITTAN

Member of the Commission