II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 June 1993

terminating the proceeding to review anti-dumping measures applicable to certain imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China

(93/377/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 Articles 9 and 14 thereof,

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

Whereas :

A . PREVIOUS PROCEDURE

(1) By Regulation (EEC) No 3433/91 [2], the Council imposed a definitive anti-dumping duty on imports of gas-fuelled of gas-fuelled, non-refillable pocket flint lighters falling within CD code ex 9613 10 00 and originating, *inter alia,* in the People's Republic of China. The rate applicable to products originating from that country was set at 16,9 %.

B. REVIEW

(2) In January, the Commission received submissions from Policity Industrial Ltd, Capital Industries Ltd and Gladstrong Investments Ltd (companies incorporated in Hong Kong and participants in joint-venture manufacturing operations in the People's Republic of China) and from Sanshui Huafa Industry & Chemcials Co., Ltd (a company introducing itself as being located in the People's Republic of China), manufacturers of the product in question, stating their intention to export the product concerned from China to the Community in the near future and requesting the establishing of individual anti-dumping duty rates for their exports.

Those companies provided, on request, evidence that they did not export the product concerned to the Community during the period covered by the previous investigation into dumping (calendar year 1989), and that they were not related to or associated with the Chinese export branches or other Chinese manufacturers of this product for which dumping was found during the original investigation period. One of the companies started exporting to the Community after the end of the investigation period.

(3) By a notice published on 11 March 1992 [3] the Community, after consultation within the Advisory Committee and in accordance with Article 14 of Regulation (EEC) No 2423/88, initiated a review of Regulation (EEC) No 3433/91 in so far as it concerned imports of pocket flint lighters originating in the People's Republic of China.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 326, 28. 11. 1991, p. 1.
[3] OJ No C 62, 11. 3. 1992, p. 2.

(4) Accordingly, the Commission officially advised the exporters and importers known to be concerend, as well as the representatives of the exporting country. It sent questionnaires to the parties directly concerend and gave them the opportunity to make known their views in writing and to request a hearing.

(5) Neither Policity Industrial Ltd, one of the exporters having requested the review, nor four producers in China, alleged to be potential exporters to the Community, replied to the questionnaire sent to them by the Commission. The other three companies having requested the review, as well as three Chinese producers related to them, replied to the questionnaire.

(6) One of the companies having solicited the review requested and was granted a hearing. The Commission informed all the companies having cooperated in the review proceeding of the results of the investigation and the Commission's considerations in this respect. The Commission also granted these companies a period within which to submit further comments and their comments were taken into consideration where appropriate.

(7) The investigation period for the review was calendar year 1991.

C. RESULTS OF THE INVESTIGATION

(8) The Commission considered it necessary to examine whether the exporters having requested the review are companies which are independent of the Chinese State in reaching their business decisions. This would distinguish the exporters from those exporters subject of the original investigation and would entitle them to individual treatment.

According to the consistent practice of the Community with regard to exports from a non-market economy country, that individual treatment is appropriate only in exceptional cases where the producer concerned has shown that its business decisions are taken independently of the State authorities. In this connection, the sole fact that a company has the status of a joint venture, with a shareholding by a foreign investor, has not as such been considered sufficient by the Community to justify individual treatment.

Indeed, individual dumping margins or anti-dumping duties are inappropriate when the State, through any form of control on the exporters concerned, can take advantage of differentiation of the anti-dumping duty and thus undermine the effectiveness of the measures taken.

In examining whether this requirement is met, the Commission found the following:

1. *Policity Industrial Ltd, Hong Kong*

(9) Neither Policity Industrial Ltd, Hong Kong, nor its allegedly relate company in China, Dongguan Poly Action Plastics & Metal Mfg Co Ltd, submitted any information concerning their business activities to the Commission. It could not therefore be established whether the Chinese company operated outside the influence of the State authorities. No evidence of changed circumstances could therefore be found.

2. *Capital Line Industries Ltd, Hong Kong*

(10) From the information made available to the Commission by the company, it appeared that Capital Line Industries Ltd, Hong Kong, holds 30 % of the capital of the Chinese producer Dong Guan Lighter Factory, the remaining 70 % of shares being owned by Chinese State-owned companies.

(11) The fact that State-owned companies have the majority shareholding in the Chinese manufacturer of lighters led the Commission to conclude that the Dong Guan Lighter Factory could not be considered an independent company operating outside the influence of the State authorities.

3. *Gladstrong Investments Ltd, Hong Kong*

(12) From the data submitted by the company, it appeared that Gladstrong Investments Ltd, Hong Kong, is a participent in four joint-venture manufacturing operations in the People's Republic of China. While Gladstrong holds directly or indirectly a maximum of 40 % of the capital of those companies, it appeared that the remaining capital (at least 60 %), was controlled by companies in which State authorities held the majority of shares.

(13) The Commission therefore considered that none of the four Chinese producers with which Gladstrong Investments Ltd, Hong Kong, was associated could be considered an independent company free of State control.

4. *Sanshui Huafa Industry & Chemicals Co., Ltd, Hong Kong*

(14) From the information made available to the Commission by the company, it appeared that Sanshui Huafa Industry & Chemicals Co., Ltd is in fact located in Hong Kong and is 50 % and is 50 % owned by a Hong Kong company and 50 % by a company which itself is 100 % owned by the State of the People's Republic of China.

The supplier of Sanshui Huafa Industry & Chemicals Co., Ltd, Hong Kong, is a producer in China called 'Guang Dong Sanshui Huafa Industry & Chemicals Co., Ltd' whose stock is shared equally (50-50) between the same companies which own Sanshui Huafa Industry & Chemicals Co., Ltd, Hong Kong.

(15) The fact that Guang Dong Sanshui Huafa Industry & Chemicals Co., Ltd is 50 % owned by a State controlled company in China means that the State authorities are able to block the business decisions of the company and thus exercise a significant degree of control.

5. Conclusion

(16) For the reasons given above, no individual treatment can be granted to any of the Chinese companies involved in the review.

(17) One company submitted an offer of undertaking. However, since individual treatment is not appropriate for that company, the offer could not be considered.

D. **TERMINATION OF REVIEW PROCEEDING**

(18) In those circumstances, the proceeding to review the definitive anti-dumping duty applicable to certain imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China should be terminated without any change to the measures in force.

(19) No objections to this course of action were raised in the Advisory Committee,

HAS DECIDED AS FOLLOWS:

Sole Article

The proceeding to review anti-dumping measures under Regulation (EEC) No 3433/91 in respect of certain imports of gas-fuelled, non-refillable pocket flint lighters falling within CN code ex 9613 10 00 and originating in the People's Republic of China, is hereby terminated.

Done at Brussels, 22 June 1993.

For the Commission

Leon BRITTAN

Member of the Commission