COMMISSION DECISION

of 22 May 2003

terminating the anti-dumping proceeding concerning imports of recordable compact disks originating in India

(2003/371/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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], as last amended by Regulation (EC) No 1972/2002 [2], and in particular Article 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 17 May 2002, the Commission announced, by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of recordable compact disks (CD-Rs) originating in India.

(2) The proceeding was initiated as a result of a complaint lodged in April 2002 by the Committee of CD-R manufacturers (CECMA), acting on behalf of producers representing a major proportion of the total Community production of CD-Rs. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-dumping proceeding.

(3) There are definitive anti-dumping measures currently in force on imports of CD-Rs originating in Taiwan (Council Regulation (EC) No 1050/2002 [4]). A parallel anti-subsidy proceeding concerning imports into the Community of the same product originating in India was initiated by a notice published in the *Official Journal of the European Communities* [5] on the same date of the initiation of the anti-dumping proceeding referred to in recital 1.

(4) The Commission officially advised the applicant and the other known Community producers, the exporting producer, importers, users and suppliers known to be concerned as well as the representatives of India of the initiation of the proceeding. The parties directly concerned were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(5) The exporting producer in India, as well as the applicant and other Community producers, importers, consumers association and suppliers, made their views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted a hearing.

(6) Certain parties contended that the applicant Community producers did not fulfil the requirements of Article 5(4) of Council Regulation (EC) No 384/96 (basic Regulation) and that the initiation of the investigation was not warranted. In this respect, it should be noted that both statutory pre-initiation thresholds, namely the 25 % and 50 % thresholds of Article 5(4), were met and, therefore, the investigation could be initiated.

(7) The Commission sought, by means of questionnaires sent to all known parties, and verified all the information it deemed necessary for the purpose of a determination of dumping, injury and Community interest. In this regard, the Commission carried out verification visits at the premises of the following companies:

(a) *Exporting producer in India:*

— Moser Baer India Ltd., New Delhi, India;

(b) *Producers in the Community:*

— Computer Support Italcard SRL, Milan, Italy,

— C.D.A Datenträger Albrechts GmbH, Albrechts, Germany,

— CPO Magnetic Products BV, Oosterhout, the Netherlands,

— Fuji Magnetics GmbH, Kleve, Germany,

— Mitsui Advanced Media SA, Ensisheim, France,

— MPO Media SAS, Averton, France,

— TDK Recording Media Europe SA, Bascharage, Luxembourg,

— Prime Disc Technologies GmbH, Wiesbaden, Germany,

— IMAG Optical Storage Ltd, Limerick, Ireland,

— Multimedia Info-Tech Ltd, Belfast, Northern Ireland;

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 116, 17.5.2002, p. 2.
[4] OJ L 160, 18.6.2002, p. 2.
[5] OJ C 116, 17.5.2002, p. 4.

(c) *Suppliers in the Community:*

— Bayer AG, Leverkusen, Germany,

— Steag Hamatech, Sternenfels, Germany,

(8) The investigation of dumping and injury covered the period from 1 April 2001 to 31 March 2002 (investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 1998 to the end of the investigation period.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(9) The product under consideration is recordable compact discs (CD-Rs) currently classifiable under CN code ex 8523 90 00.

(10) A CD-R is a polycarbonate disc, which is coated with a layer of dye, a layer of reflective material such as gold or silver and a protective layer. Recording on such a disk can be done only once and therefore the disc is said to be of the type WORM (Write Once Read Many). The disc is an optical storage medium for digital data or music. Recording is realised by exposing the dye-layer to an infrared laser beam in a CD-R recorder.

CD-Rs can be distinguished according to the type of data stored (data CD-R versus music CD-R), the storage capacity, the reflective metal layer (mainly silver) and whether or not the CD-R is printed upon.

The product is also sold in different qualities and comes on the market in different types of packaging of which the most frequently encountered are regular or slim jewel cases containing one CD-R, shrink-wrapped spindles of 10 to 100 CD-Rs, cake-boxes of 10 to 100 CD-Rs, envelopes containing one CD-R packed in cellophane, or in a carton or paper sleeve, etc.

Although the use and the quality of the various types of CD-Rs sold may differ, this does not entail any significant differences in the basic physical and technical characteristics of the different types. They are therefore considered as one product for the purpose of this investigation.

2. Like product

(11) The investigation showed that CD-Rs produced and sold on the domestic market of India have similar basic physical and technical characteristics and uses compared with that exported from this country to the Community. Similarly, CD-Rs manufactured by the applicant and other Community producers and sold on the Community market have similar basic physical and technical characteristics and uses when compared to these exported to the Community from the country in question.

(12) Consequently, CD-Rs sold on the domestic market of India and exported to the Community as well as CD-Rs produced and sold in the Community are considered as a like product within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

(13) The investigation has shown that Moser Baer India Ltd. is the sole exporting producer of the product concerned in India.

1. Normal value

(14) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of CD-Rs to independent customers by the sole exporting producer were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community.

(15) This assessment revealed that the exporting producer had representative sales of CD-Rs on the domestic market during the IP.

(16) The Commission considered domestically sold and exported product types, which had similar storage capacity, metal layer, printing, quality and uses, as being directly comparable.

(17) Domestic sales of a particular product type were considered as sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable product type exported to the Community.

(18) The Commission subsequently examined whether the domestic sales of the exporting producer could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

This was done by establishing the proportion of domestic sales to independent customers, of each exported product type, sold at a loss on the domestic market during the IP. For those product types where more than 80 % by volume of sales on the domestic market were not below unit costs, and where the weighted average sales price was equal to or higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question.

(19) For all types exported to the Community, domestic sales were found to have been made in the ordinary course of trade. Normal value was, therefore, based for the corresponding product type on the actual prices paid or payable, by independent customers in the domestic market of India, during the IP, as set out in Article 2(1) of the basic Regulation.

(20) Where necessary, the manufacturing costs and the selling, general and administrative (SG&A) expenses reported were corrected before being used in the ordinary course of trade test.

2. **Export price**

(21) Certain exports of the product under consideration by the exporting producer were made directly to independent customers in the Community and consequently the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable.

(22) The exporting producer also sold the product concerned to related parties in the Community. For these exports, the export price was established in accordance with Article 2(9) of the basic Regulation, on the basis of prices at which the imported products were first resold to an independent buyer. For this purpose, adjustments were made to take account of all costs, including duties and taxes, incurred between importation and resale, and of profits normally accruing, so that a reliable export price could be established.

3. **Comparison**

(23) The comparison between normal value and export price for the exporting producer concerned was made on an ex-factory basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. In this respect, allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs and commissions have been granted where applicable and justified.

(24) The exporting producer claimed a special adjustment for differences in the level of trade pursuant to Article 2(10)(d) of the basic Regulation. The company argued that its domestic market is formed mainly by distributors and retailers while in the export market there are either OEM (i.e. original equipment manufacturers) sales or sales through distributors. In view of the absence of retailers in the export market, the exporting producer claimed an adjustment on sales prices to retailers quantified at the level of a weighted average price difference between sales prices to retailers and those to distributors in the domestic market.

(25) It is noted that the exporting producer did not claim an adjustment which may arise in OEM sales. Furthermore, it has not shown that there are differences in functions of the seller for sales in the domestic market to retailers and to distributors which could affect the comparability of export price and normal value. More importantly, the investigation has shown that the vast majority of its exports to the Community concerned OEM sales, whilst such sales did not exist in the domestic market. The majority of the domestic sales were sales to distributors and only a minor proportion were sales to retailers. The request for a level of trade adjustment thus rests on the assumption that the distribution level on the domestic side is comparable to the level of OEM sales on the export side. In view of the conclusions reached in recital 27, it was decided not to pursue this matter further and consequently no adjustment was made for the alleged differences in the level of trade.

4. **Dumping margin**

(26) Pursuant to Article 2(11) of the basic Regulation, the weighted average normal value by product type was compared with the weighted average export price by product type.

(27) The calculation has shown no dumping for Moser Baer India Ltd. Given that this is the sole exporting producer in India, and pursuant to Article 9(3) of the basic Regulation, the Commission concludes that the anti-dumping proceeding concerning CD-Rs originating in India should be terminated without the imposition of measures.

D. **INJURY**

(28) In view of the conclusions concerning dumping, it was not considered necessary to analyse injury, causality and Community interest aspects arising from the investigation since this would not alter the conclusions reached.

E. **CONCLUSION**

(29) All parties concerned were informed of the essential facts and considerations on the basis of which the termination of the anti-dumping proceeding would be based. They were granted a period within which to make representations subsequent to the disclosure. Representations received further to the disclosure did not however provide any new elements which could affect the above findings.

(30) In particular, CECMA claimed that there was a particular market situation and the normal value should have been constructed because the domestic sales did not permit a proper comparison since the sole exporting producer operates an Export Oriented Unit which received countervailable subsidies. CECMA also claimed that the 'strategy' of the exporting producer to sell only low quality CD-Rs in its domestic market must be regarded as a particular market situation.

(31) As set out in recitals 14 to 20 above, the investigation has shown that the domestic sales were sufficiently representative and in the ordinary course of trade. The quality of CD-Rs was taken into account when comparing domestically sold and exported product types. No particular market situation was established, which could allow the use of constructed normal value in accordance with Article 2(3) of the basic Regulation. The existence of any countervailable subsidies is the subject of the parallel anti-subsidy investigation and has not affected the establishment of normal value.

(32) In view of the findings set out above, the Commission considers that the anti-dumping proceeding concerning imports into the Community of CD-Rs originating in India should be terminated,

HAS DECIDED AS FOLLOWS:

Sole Article

The anti-dumping proceeding concerning imports into the Community of recordable compact discs (CD-Rs) currently classifiable within CN code ex 8523 90 00 and originating in India is hereby terminated.

Done at Brussels, 22 May 2003.

For the Commission

Pascal LAMY

Member of the Commission