COMMISSION DECISION

of 11 September 2003

terminating the anti-dumping proceedings concerning imports of disposable gas-fuelled pocket lighters originating in the People's Republic of China, Indonesia, Malaysia and Vietnam and terminating the interim review of the anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China or consigned from or originating in Taiwan and on imports of certain refillable pocket flint lighters originating in the People's Republic of China or consigned from or originating in Taiwan

(2003/645/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 and Article 11(3) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In 1991, the Council, by Regulation (EEC) No 3433/91 [3], imposed a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in, *inter alia*, the People's Republic of China.

(2) By Regulation (EC) No 192/1999 [4] the Council, further to an investigation in accordance with Article 13 of Council Regulation (EC) No 384/96 (the basic Regulation), extended the above anti-dumping measure to: (a) imports of gas-fuelled non-refillable pocket flint lighters consigned from or originating in Taiwan; and (b) imports of certain refillable lighters originating in the People's Republic of China or consigned from or originating in Taiwan.

(3) In 2001, Council Regulation (EC) No 1824/2001 [5], imposed a definitive duty on gas fuelled non-refillable pocket flint lighters falling within CN code 9613 10 00 (TARIC code 9613 10 00*19) originating in the People's Republic of China and maintained the anti-dumping duties extended by Regulation (EC) No 192/1999 to imports of certain refillable pocket flint lighters originating in the People's Republic of China or consigned from or originating in Taiwan falling within CN code ex 9613 20 90 (TARIC codes 9613 20 90*21 and 9613 20 90*29) and to imports of non-refillable lighters consigned from Taiwan and falling within CN code 9613 10 00 (TARIC code 9613 10 00*19) or originating in Taiwan and falling within CN code 9613 10 00 (TARIC code 9613 10 00*19). These duties were imposed further to an expiry review concerning the definitive anti-dumping measures imposed by Regulation (EEC) No 3433/91 and extended by Regulation (EC) No 192/1999, in accordance with Article 11(2) of the basic Regulation.

(4) In 14 May 2002, the Commission received a complaint concerning the alleged injurious dumping by imports of disposable gas-fuelled pocket lighters, whether flint or piezo, with or without a refill valve originating in the People's Republic of China, Indonesia, Malaysia and Vietnam (disposable lighters).

(5) The complaint was lodged by the European Federation of Lighter Manufacturers (EFLM) acting on behalf of Community producers representing 90 % of total Community production of disposable lighters pursuant to Articles 4(1) and 5(4) of the basic Regulation.

(6) The complaint contained prima facie evidence of the existence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-dumping proceeding in accordance with Article 5 of the basic Regulation.

(7) Regarding the definitive anti-dumping measures in force against non-refillable flint lighters and certain refillable lighters originating in the People's Republic of China or consigned from or originating in Taiwan, the Commission considered that should it be determined that, on the basis of the findings of the investigation initiated in accordance with Article 5 of the basic Regulation, measures are to be imposed on disposable lighters originating in the People's Republic of China, the continued imposition of the measures imposed by Regulation (EC) No 1824/2001 would no longer be appropriate, and Regulation (EC) No 1824/2001 would have to be amended or repealed accordingly. Indeed, should the investigation have been formally concluded, one of the consequences could have been the imposition of measures on all disposable gas-fuelled pocket lighters, i.e. refillable or non-refillable, piezo or flint originating in the countries subject to the present investigation. On the other hand, measures on refillable or non-refillable flint lighters originating in the People's Republic of China were already in place, which could have led to conflict with the new measures. Such conflict would have been avoided by amending or repealing the existing measures. Therefore, it was considered that a review in accordance with Article 11(3) of the basic Regulation

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ L 326, 28.11.1991, p. 1.
[4] OJ L 22, 29.1.1999, p. 1.
[5] OJ L 248, 18.9.2001, p. 1.

(interim review) should be opened as regards Regulation (EC) No 1824/2001 in order to allow any amendment or repeal necessary in the light of the investigation under Article 5 of the basic Regulation concerning all disposable lighters originating in the People's Republic of China, Indonesia, Malaysia and Vietnam.

(8) Accordingly, the Commission, after consultation of the Advisory Committee, by a notice published in the *Official Journal of the European Communities* ([1]), simultaneously initiated an anti-dumping proceeding concerning imports into the Community of disposable gas-fuelled pocket lighters originating in the People's Republic of China, Indonesia, Malaysia and Vietnam and an interim review with regard to Regulation (EC) No 1824/2001. Considering the above, the initiation of this interim review was entirely of an ancillary nature.

(9) The Commission officially advised the exporting producers and importers known to be concerned, the representatives of the exporting country, the representative users and the complainant Community producers. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

B. WITHDRAWAL OF THE COMPLAINT AND TERMINATION OF THE PROCEEDING

(10) By a letter of 14 July 2003 to the Commission, EFLM formally withdrew its complaint.

(11) In accordance with Article 9(1) of the basic Regulation, the proceeding may be terminated where the complaint is withdrawn, unless such termination would not be in the Community interest.

(12) The Commission considered that the present proceeding should be terminated since the investigation had not brought to light any considerations showing that such termination would not be in the Community interest. Interested parties were informed accordingly and were given the opportunity to comment.

(13) One exporting producer from China claimed that the Commission should continue its investigation despite the withdrawal of the complaint and publish the relevant findings, in particular as regards dumping. In this context, the exporting producer concerned argued that he would have an interest in the continuation of the investigation due to his cooperation throughout the proceeding and his efforts to show the absence of dumping as far as his own exports are concerned.

(14) The same exporting producer further claimed that it should be avoided in future to initiate anti-dumping proceedings. He alleged that the withdrawal of the complaint would show that the complaint leading to this investigation was unfounded. Therefore, this exporting producer concluded that should there be a finding of absence of dumping, this should be published accordingly. This would prevent the Community industry to lodge a new complaint in the near future.

(15) These claims had to be rejected. In accordance with Article 5(1) of the basic Regulation, an anti-dumping investigation shall be initiated in each case the Commission has received a complaint containing merely sufficient prima facie evidence of the existence of injurious dumping. In the present case, it was found that the complaint lodged by the Community industry was sufficiently supported by prima facie evidence, consequently the initiation of the present proceeding was fully justified. In accordance with Article 9(1) of the basic Regulation an anti-dumping proceeding may be terminated in case the complaint is withdrawn unless such termination would not be in the Community interest. As mentioned above in recital 12, however, there was no evidence or information available that a termination of the proceeding would not be in the Community interest. When examining the Community interest, and in accordance with Article 21 of the basic Regulation, the interests of the exporting producers cannot be taken in consideration. In this context it should be noted that no comments were received from parties mentioned in Article 21 of the basic Regulation, such as users, importers or consumers indicating that such termination would not be in the Community interest. Therefore, it was concluded that there was no reason to continue the investigation, and accordingly, the proceeding should be terminated without formal determinations concerning the existence or absence of dumping and injury nor any other aspect of the investigation.

(16) The same exporting producer claimed that the definitive anti-dumping measures in force against non-refillable flint lighters and certain refillable lighters originating in the People's Republic of China or consigned from or originating in Taiwan should be repealed in case of the termination of the proceeding. In this context, the exporting producer concerned argued that the current investigation covers the same like product and that therefore the continuation of the definitive measures on non-refillable flint lighters and certain refillable lighters originating in the People's Republic of China or consigned from or originating in Taiwan would be in breach of Article 1(4) and 9(5) of the basic Regulation.

(17) It should be noted that no formal conclusions have been reached on any of the aspects investigated during the current proceeding, including the investigation regarding the product under consideration and the like product. The evidence which had been submitted within the complaint leading to the initiation of the present proceeding, including the information concerning the product under consideration and the like product was prima facie evidence, which was considered satisfying for the initiation stage, but cannot suffice for, nor predict, any final determination.

([1]) OJ C 153, 27.6.2002, p. 3.

(18) Furthermore, as mentioned above in recitals 7 and 8, the interim review was merely ancillary to the investigation initiated pursuant to Article 5 of the basic Regulation and should allow to amend or repeal the anti-dumping duty in force on imports of non-refillable flint lighters and certain refillable lighters originating in the People's Republic of China or consigned from or originating in Taiwan, if appropriate, on the basis of the findings of the investigation initiated pursuant to Article 5 of the basic Regulation. As mentioned above in recitals 15 and 17, the current investigation did not lead to any formal conclusions which would justify the amendment or repeal of Regulation (EC) No 1824/2001 by which it was found that dumped imports of flint lighters from the People's Republic of China caused injury to the Community industry. In accordance with Article 9(4) of the basic Regulation, an anti-dumping duty shall be imposed when it was finally established that there is dumping and injury caused thereby, and that the Community interest calls for intervention. In accordance with Article 11(3) of the basic Regulation, definitive anti-dumping measures can only be amended or repealed where circumstances with regard to dumping and injury have changed significantly, which could not be confirmed in the present proceeding. Consequently, the interim review should be terminated without amending or repealing the measures in force on imports of non-refillable flint lighters and certain refillable lighters originating in the People's Republic of China or consigned from or originating in Taiwan.

(19) Given the above, the Commission concludes that the anti-dumping proceeding concerning imports into the Community of disposable lighters originating in the People's Republic of China, Indonesia, Malaysia and Vietnam should be terminated without the imposition of anti-dumping measures.

(20) The interim review should be terminated without amending or repealing the measures in force on imports of non-refillable flint lighters and certain refillable lighters originating in the People's Republic of China or consigned from or originating in Taiwan given its ancillary nature described in recitals 7 and 8 to the investigation initiated pursuant to Article 5 of the basic Regulation,

HAS DECIDED AS FOLLOWS:

Sole Article

1. The anti-dumping proceeding initiated pursuant to Article 5 of Council Regulation (EC) No 384/96 concerning imports of disposable gas-fuelled pocket lighters originating in the People's Republic of China, Indonesia, Malaysia and Vietnam is hereby terminated.

2. The interim review of the anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China or consigned from or originating in Taiwan and on imports of certain refillable pocket flint lighters originating in the People's Republic of China or consigned from or originating in Taiwan initiated pursuant to Article 11(3) of Council Regulation (EC) No 384/96 is hereby terminated without amending the anti-dumping duty in force.

3. The definitive anti-dumping duties imposed by Regulation (EC) No 1824/2001 remain in force.

Done at Brussels, 11 September 2003.

For the Commission

Pascal LAMY

Member of the Commission