COMMISSION REGULATION (EEC) No 3052/88

of 29 September 1988

imposing a provisional anti-dumping duty on imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China

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 (6) thereof,

After consultations within the Advisory Committee or provided for under that Regulation,

Whereas :

A. Procedure

(1) Following a complaint lodged by the European Brushware Federation (Fédération Européenne de l'Industrie de la Brosserie de la Pinceauterie — FEIBP) on behalf of Community producers in all Member States of paint, distemper, varnish and similar brushes whose collective output constitutes practically all Community production of the products in question, the Commission published a notice in the *Official Journal of the European Communities* [2], announcing 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, corresponding to Nimexe code 96.01-49 and, from 1 January 1988, to CN code ex 9603 40 10, originating in the People's Republic China ; it then commenced an investigation.

(2) Following the investigation, which established the existence of dumping and injury, the Chinese firm China National Native Produce & Animal By-Products Import & Export Corporation offered an undertaking limiting the quantities exported to the Community.

(3) Under the terms of the undertaking, the Chinese firm undertock to reduce its exports to such an extent that the injury suffered by the Community industry would be eliminated. The Council accepted the undertaking by Decision 87/104/EEC [3].

(4) In May 1988 the Commission received information suggesting that Chinese exports in 1987 to the Federal Republic of Germany and the United Kingdom alone far exceeded the maximum allowed for the Community as a whole in that year under the terms of the exporting firm's undertaking.

(5) The Commission examined the information brought to its attention and heard the Chinese exporter.

B. Failure to comply with the undertaking

(6) The Commission carried out an initial verification of the alleged facts using the official statistics available. Those statistics indicate that the undertaking has indeed been broken. They confirm that imports of the product concerned from the People's Republic of China into Germany and the United Kingdom alone far exceed the overall quantity laid down in the undertaking for the Community as a whole ; the United Kingdom authorities also supplied evidence that certain Chinese exports were transiting through Hong Kong, thus increasing the overall volume of exports originating in China, which amounts in this way to nearly twice that allowed under the undertaking.

(7) The Chinese exporter claims that the quantities exported to the Community do not exceed the limits laid down in the undertaking. In support of this claim it supplied figures which do not, however, agree with those obtained from the Community importers, not with those found in the official statistics referred to above, and do not include Chinese export transiting through Hong Kong. The Chinese exporter was unable to put forward convincing arguments to refute the data obtained by the Commission. It should be noted that under the terms of the undertaking accepted by the Council, the exporter undertook not to exceed the quantities laid down whether by direct or indirect exports, or through a subsidiary company, branch or agent.

(8) The Commission therefore has detailed evidence showing that the Chinese producer's exports to the Community, whether direct or transiting through a third country, far exceed the annual figures laid down in the undertaking.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 103, 30. 4. 1986, p. 2.
[3] OJ No L 46, 14. 2. 1987, p. 45.

(9) In view of the facts as established above, the Commission has proposed to the Council that it revoke its earlier acceptance of the undertaking offered by the China National Native Produce & Animal By-Products Import and Export Corporation.

C. Reopening of the investigation

(10) The Commission considers that under these circumstances a new examination of the facts is warranted. It has accordingly reopened the investigation.

D. Provisional Measures

(11) In view of the difficult economic situation facing the Community industry, the Commission considers that it is in the Community interest to impose forthwith a provisional anti-dumping duty on all imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China, produced and/or exported by the China National Native Produce & Animal By-Products Import and Export Corporation. It has also proposed to the Council that it revoke its acceptance of the undertaking by the above-mentioned Chinese firm.

E. Rate of duty

(11) In accordance with Article 10 (6) of Regulation (EEC) No 2423/88 the rate of the anti-dumping duty must be determined on the basis of the facts established before the undertaking was accepted. The provisional duty is accordingly fixed at an *ad valorem* rate of 69 % of the net price per piece, free at Community frontier, not cleared through customs, charged to the first importer in the Community, on the basis of the information contained in Council Decision 87/104/EEC under heading 'F. Injury'.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of paint, distemper, varnish and similar brushes corresponding to CN code ex 9603 40 10, originating in the People's Republic of China, produced and/or exported by the Chinese firm China National Native Produce & Animal By-Products Import and Export Corporation.

2. The duty shall be set at an *ad valorem* rate of 69 % of the net price per piece, free-at-Community-frontier, not cleared through customs, charged to the first importer in the Community.

3. The provisions in force concerning customs duties shall apply.

4. The entry for free circulation in the Community of the products referred to in paragraph to in paragraph 1 shall be subject to the lodging of a security equivalent to the amount of the provisional duty.

Article 2

Whithout prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88 the parties concerned may make known their point of view in writing and ask to be heard by the Commission within one month of the entry into forced of this Regulation.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities.*

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2423/88 it shall apply for a period of four months of until the Council adopts definitive measures, whichever is the sooner.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 September 1988.

For the Commission

Willy DE CLERCQ

Member of the Commission