# COUNCIL REGULATION (EEC) No 725/89

## of 20 March 1989

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

THE COUNCIL 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 12 thereof,

Having regard to the proposal from the Commission, submitted after consultation within the Advisory Committee as provided for by that Regulation,

Whereas :

### A. Procedure

(1) Following a complaint lodged by the European Brushware Federation (FEIBP) on behalf of Community manufacturers of paint, distemper, varnish and similar brushes who together account for virtually the whole Community output of these products, the Commission published a notice in the *Official Journal of the European Communities* (2) announcing the initiative of an anti-dumping proceeding concerning imports into the Community of paint, distemper, varnish and similar brushes falling within subheading ex 96.01 B III of the Common Customs Tariff, (NIMEXE code 96.01-49) and, from 1 January 1988, CN code ex 9603 40 10, originating in the People's Republic of 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 and Export Corporation offered an undertaking to limit the quantities exported to the Community.

(3) Under the terms of the undertaking the Chinese firm was to reduce its exports so as to eliminate the injury to the Communiy industry. The Council accepted this undertaking (3).

### B. Failure to comply with the undertaking and reopening of the proceeding

(4) After receiving and verifying information suggesting that Chinese exports in 1987 to the Federal Republic of Germany and the United Kingdom alone had far exceeded the maximum allowed for the Community as a whole in that year under the terms of the exporting firm's undertaking, the Commission withdrew acceptance of the undertaking, imposed a provisional anti-dumping duty under Regulation (EEC) No 3052/88 (4) and decided to reopen the anti-dumping proceeding concerning imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China (5).

### C. Investigation

(5) The investigation concerned paint, distemper, varnish and similar brushes (other than brushes of CN code 9603 30) falling within CN code 9603 40 10.

(6) The Commission officially advised the exporter and importers known to be concerned, the authorities of the exporting country and Community producers of the reopening of the proceeding. It sent questionnaires to the parties directly concerned and also gave them the opportunity to make known their views in writing and to request a hearing.

(7) 22 Community producers and five importers returned the questionnaire duly completed to the Commission and made known their views in writing.

(8) The China National Native Produce & Animal By-Products Import & Export Corporation did not reply to the Commission's questionnaire. Consequently, the findings with regard to that firm and other parties which failed to reply or otherwise indicate an interest were made on the basis of the

(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. Council Decision 87/104/EEC.
(4) OJ No L 272, 4. 10. 1988, p. 16. This Regulation was amended by Regulation (EEC) No 3453/88 (OJ No L 303, 8. 12. 1988, p. 11) and extended by Regulation (EEC) No 177/89 (OJ No L 23, 27. 1. 1989, p. 5).
(5) OJ No C 257, 4. 10. 1988, p. 5.

facts available (Article 7 (7) (b) of Regulation (EEC) No 2423/88), in this case invoices obtained from Community producers and/or importers and official national and Community statistics.

(9) The exporter was informed of the Commission's intention to propose that the Council extend the provisional duty, and did not object.

(10) Two importers asked for an opportunity to make known their views orally and to be informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures, and their request was accepted.

(11) The Commission gathered and verified all information it deemed to be necessary and carried out investigations at the premises of nine Community producers :

— Britton Chadwick, United Kingdom
— Mosley Stone, United Kingdom
— Harris, United Kingdom
— Battys of Leeds, United Kingdom
— Hall, United Kingdom
— Schabert, Federal Republic of Germany
— Mako, Federal Republic of Germany
— Wistoba, Federal Republic of Germany
— Sterkel, Federal Republic of Germany,

and of five Community importers :

— Delbanco, United Kingdom
— Rothländer, Federal Republic of Germany
— Berg, Federal Republic of Germany
— Nölle, Federal Republic of Germany
— Storchwerke, Federal Republic of Germany.

The Commission asked for and received detailed written submissions from most of the producers concerned and carried out such verification of the information they contained as it deemed necessary.

(12) The Commission visited the premises of two producers in Sri Lanka, Ravi Industries Ltd in Colombo and Harris (Ceylon) Ltd in Meegoda.

(13) The Commission's investigation covered the period from 1 July 1987 to 31 August 1988.

## D. Dumping

(a) *Normal value*

(14) In order to establish whether the imports from the People's Republic of China were being dumped, the Commission had to take account of the fact that the country does not have a market economy and therefore based its calculations on the normal value in a market-economy country. In this connection, the complainants had suggested the Sri Lankan market.

(15) Two importers challenged the choice of Sri Lanka as a reference market, on the grounds that the product was not a like product within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 ; that production costs were not comparable, in particular because Sri Lanka had to import some of the raw materials ; that the volume of production was far smaller that that on the Chinese market ; that Sri Lanka was not an exporter, or not a significant exporter, of the product to the Community ; that there was insufficient competition, resulting in high domestic prices ; and that one of the local producers was owned by a Community firm. The two importers accordingly proposed that Taiwan be used as a reference country.

(16) The Commission, however, found that it was appropriate and not unreasonable to use Sri Lanka for the purposes of establishing the normal value, and did not follow the suggestion of using Taiwan.

The comparison involving Taiwan suggested by the two importers was based on a finer, mainly synthetic-bristle 'American' type of brush produced for export to the United States and Canada, quite distinct from the Chinese product, and with different production costs.

In any case, when the Commission duly approached the main Taiwanese producers they refused to cooperate.

(17) The Commission is satisfied that there is no appreciable difference, in terms of the type of product or the production process, between Sri Lanka and the People's Republic of China.

The brushes from Sri Lanka, like the Chinese product, are essentially made from animal hairs mounted on wooden handles. This 'European' type of brush corresponds to the European standard. Its handle is of more or less the same thickness as that of the Chinese product. Accordingly, the thickness at the ferrule and the number and weight of bristles per brush is also similar. The visible part of the bristle is at least as long as on the Chinese product. On this basis, therefore, the Sri Lankan product can be accepted as a like product within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

It has been alleged that China's possession of the main raw materials — in particular, it is the world's only producer of pig bristles — gives it a comparative advantage, so that its production costs are lower than those of Sri Lanka. The Commission was unable to accept this claim, since even assuming that such a comparative advantage exists, could be properly quantified and is not offset by competitive weaknesses, it is not clear how this would be reflected in the normal value if the same conditions obtained in the market-economy third country, given that prices reflect demand as well as costs. Moreover, even if it were possible to obtain an exact measurement of such advantages or disadvantages, any adjustment of costs established in a market economy on that basis would imply reliance on the costs in a non-market economy, which is precisely what Article 2 (5) of Regulation (EEC) No 2423/88 is designed to prevent.

In both countries the main product is a flat brush. Manufacture is mainly by hand, in small-scale production units. The manufacturing processes are comparable, and it is irrelevant that China's total output is larger than Sri Lanka's.

The same applies to the argument that Sri Lanka is not a significant exporter to the Community.

As to the level of prices in Sri Lanka, the Commission found that there was sufficient domestic competition between two producers, which supply approximately 90 % of the home market, to ensure that prices were not excessive and were reasonably related to production costs. The level of prices ensured that Sri Lankan manufacturers earned reasonable but not excessive profits. In these circumstances the Commission does not see why the fact that one of those manufacturers is the subsidiary of a Community firm should prevent Sri Lanka being used as a reference country.

(18) Consequently, the Commission established normal value on the basis of the actual average selling prices from 1 July 1987 to 31 August 1988 on the Sri Lankan market.

(b) *Export price*

(19) Wherever possible, export prices were determined on the basis of the prices actually paid by the Community importers to the exporters for the products sold for export to the Community.

(c) *Comparison*

(20) In comparing the normal value with the export prices, the Commission took account, where circumtances allowed and sufficient evidence was available, of differences affecting price comparability. Adjustments were made to allow for differences in the physical characteristics of the product, import charges and indirect taxes in Sri Lanka, payment and delivery terms, transport and insurance costs and various types of packaging. With regard to the physical characteristics, the Commission also took into consideration the fact that the manufacture of round or angled brushes used for radiators and ceilings, which account for a very small proportion of China's total brush exports, is costlier than that of the flat brushes produced in Sri Lanka. All comparisons were made at the ex-works stage.

(d) *Margins*

(21) Comparison of the normal value and the export prices for the reference period showed that imports from the People's Republic of China are being dumped, the dumping margin being equal to the amount by which the normal value exceeds the price of exports to the Community.

The dumping margin varied depending on the type of brush and the importing Member State. The weighted average margin for flat brushes was found to be very considerable, in excess of 90 % for exports to the Community as a whole. The average margins on other types of brush were even higher.

## E. Injury

(22) It was found during the investigation that 92 % of the Chinese exports went to five Community countries, Germany, Ireland, the United Kingdom, France and Italy, but with an overwhelming concentration on the German, Irish and United Kingdom markets. Accordingly, the assessment of injury was centred mainly, though not exclusively, on these three countries.

(a) *Like product*

(23) Two importers argued that the Chinese exports were not comparable with the Community product.

The Commission cannot accept this view. There are several types of paintbrush : the high-quality type for professional use and the lower-quality types for non-professionals. The imports originating in China mainly compete in the second category, for which the Commission effected the comparison.

The Commission looked at brushes from a number of producers or importers in terms of a variety of factors : the type and weight of bristle, the cooking process, the quality and preparation of the bristles, the quality and shape of handle, the finish of the product, including the ferrule and glue, and the overall strength of the brush. It found no crucial difference between the comparable Chinese and Community products in respect of the purpose for which they were intended. The Commission found that these were like products for the purposes of Article 2 (12) of Regulation (EEC) No 2423/88.

(b) *Export volume*

(24) In order to determine the trend of Chinese exports to the Community, the Commission had to rely on available statistics and information supplied by the Community industry, since the exporter failed to reply to the questionnaire and only a few importers offered satisfactory cooperation.

Despite considerable fluctuations from time to time, the information available shows a marked growth in imports from China. Already standing at a high level in 1980 (10 million pieces), these had increased more than threefold by 1986 (33 million pieces), and rose again to 46 million pieces in 1987 and 31 million pieces for the first six months of 1988 alone (equivalent to 62 million pieces on an annual basis).

This growth in volume has not been fully reflected in the value since the Chinese brushes are priced in US dollars, and the US dollar depreciated considerably in 1987 and 1988 against both the German mark and pound sterling. Currency movements exacerbated the injury caused by the imports to the Community industry.

(25) Imports from China increased their market share from approximately 24 % in 1984 to almost 38 % in the first half of 1988. Over the same period, Community consumption remained stable at around 145 million units. The growth of Chinese exports to the Community was accentuated by the fact that they are liable to an anti-dumping duty of 125 % in the United States and a duty of over 100 % in Canada.

(c) *Price*

(26) The Chinese product was exported to the Community at prices on average more than 70 % lower than the prices charged by the Community industry over the period of the investigation for the lowest quality of brush ; the exact level of undercutting varied according to the type of product, but was never less than 47 % for any given product. These figures can be corrected by 20 % to allow for the slightly rougher quality of manufacture of the Chinese product. Even allowing for such an adjustment, however, the prices of the Chinese product were well below the level required to cover the costs of Community producers and provide a reasonable profit. In some cases the prices were even below the cost of the main raw material, namely pig bristles, also supplied by the same exporter in the People's Republic of China.

(d) *Impact on the Community industry*

(27) The flood of dumped imports depressed the general level of prices on the Community market. From 1984 to 1988 selling prices were virtually static despite the fact that production costs in the Community increased appreciably over the same period. In fact, Community producers have been forced to align their prices on those of the Chinese exporters.

As a result of competition from Chinese imports, Community producers' market share fell from 68 % in 1984 to 57 % in 1988. This led to a fall of approximately 22 % in production in the three Member States mainly concerned between 1982 and 1988.

This led in turn to substantial capacity cuts or lower utilization rates. These developments, plus the declining profitability of Community producers, have led to closures and the loss of employment in this sector.

(e) *Causality*

(28) The trend of imports from China at prices substantially undercutting the Community product, coinciding with the very marked deterioration in the situation of the Community industry, demonstrate that these imports have caused material injury to the Community industry.

(29) The Commission considered whether other factors might have been responsible for the injury to the Community industry.

In this connection a number of importers claimed that the closure of Community firms was due to their non-competitive cost structure. The Commission found, however, that a number of Community manufacturers ceased production solely because of the dumping of Chinese paintbrushes, priced so low that the difference could not be made up by means of any rationalization measures.

(30) The importers also claimed that Community producers had failed to adapt to changing consumer habits. It was argued that the importers of the Chinese product had created a new market for cheap disposable brushes, particularly in supermarkets and do-it-yourself centres, and that the traditional Community producers were not interested in these outlets. It was further claimed that the Community producers themselves had bought considerable quantities of Chinese brushes from independent importers in order to sell them at a profit and thus be able to finance their own production.

As to the first of these points, the assertion that a new market has been created is unacceptable. The product was already established on the market, and to sell it at less than half the usual price does not amount to the introduction of a new product. In any event, it is only because of the low price of the dumped goods that the consumer is induced to discard a brush after limited use rather than going to the additional cost and inconvenience of cleaning it. It is, moreover, understandable that the Community industry is not interested in selling products which would only be attractive at prices below the variable production costs.

As regards the sale of Chinese products by Community producers themselves, the Commission has established, on the basis of the facts available, that the volume of such sales varied appreciably during the period of the investigation depending on the Member State and the company concerned. With the exception of a small number of firms which have ceased production, however, Community producers started selling Chinese paintbrushes alongside their own products solely in order to prevent their traditional markets from being taken over by suppliers offering imported goods only. The Commission's finding was that Community producers did not in general import Chinese products of their own volition but did so only in self-defence against unfair competition. Nor did the Commission's investigations reveal any abuses; the Community producers resold the Chinese paintbrushes at a modest mark-up at as high a price as the market would bear, but without excessive profit, and only to the extent necessary to ensure the sale of their own products.

(31) Finally, the Commission looked at the impact of exports originating in other third countries. It found that imports from these countries had contracted in line with the growth of imports from China, and accounted at present for no more than about 7 % of Community consumption. Accordingly, they cannot be regarded as a cause of the injury to the Community industry.

(f) *Conclusions*

(32) In the circumstances, the Commission has concluded that the effects of the dumped imports of paint, distemper, varnish or similar brushes originating in the People's Republic of China taken in isolation must be regarded as causing material injury to the Community industry concerned. The Council has confirmed that conclusion.

## F. Community interest

(33) In view of the serious difficulties facing the Community industry, failure to take measures to eliminate the injury caused by dumping would endanger its existence, with concomitant negative consequences for employment in the regions concerned. In this connection, it should be noted that the Community industry essentially consists of small and medium-sized enterprises, largely situated in areas of high unemployment. Accordingly, it is in the interest of the Community to take measures to eliminate the injury to this Community industry, and such measures should take the form of a definitive anti-dumping duty. In view of the breach of the previous undertaking, a renewed undertaking would not constitute sufficient protection for Community producers.

(34) Two importers argued that in the context of trade with China, given the international division of labour and the structure of wage costs involved in the manufacture of cheap brushes in the Community, it was in the Community's interest to encourage labour-intensive production in third

countries. The Council does not dispute the need for international cooperation of this kind. It does not believe, however, that this goal is attained by the use of irregular commercial practices at the expense of Community producers.

The importers also argued that to impose anti-dumping measures could exclude certain importers from the Community market.

The Council does not believe this argument is justified. The imposition of a duty represents equal treatment of all Community importers, with no discrimination between those selling to different classes of user, irrespective of the channel of distribution. Nor does the proposed rate of duty in any way destroy the competitiveness of the Chinese products.

(35) No comments were forthcoming from consumers of the product. In weighing the interests of the Community brush industry against those of consumers, however, the Council did consider the impact of the anti-dumping measures on consumers. On the grounds that a relative increase in the price of the Chinese product would still give it a substantial competitive advantage, it concluded that consumer interests were adequately safeguarded.

### G. Rate of duty

(36) Taking into account the quality of the Chinese goods, the types of product and range of prices, it is considered appropriate to apply an *ad valorem* duty at a level substantially lower than the dumping margin, and not exceeding the lowest margin of undercutting identified.

Accordingly, the definitive duty is fixed at an *ad valorem* rate, of 69 % of the net price per brush, free-at-Community-frontier, not cleared through customs, payable by the first importer in the Community.

For the same reason it is also considered necessary that the amounts secured by way of the provisional anti-dumping duty imposed by Regulation (EEC) No 3052/88, as amended by Regulation (EEC) No 3453/88, should be collected definitively,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China, falling within CN code 9603 40 10.

2. The duty shall be set at an *ad valorem* rate of 69 % of the net price per paint, distemper, varnish or similar brush, free-at-Community-frontier, not cleared through customs, payable by the first importer in the Community.

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

*Article 2*

Amounts secured by way of the provisional anti-dumping duty imposed by Regulation (EEC) No 3052/88, as amended by Regulation (EEC) No 3453/88, shall be definitively collected.

*Article 3*

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

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

Done at Brussels, 20 March 1989.

*For the Council*

*The President*

F. FERNANDEZ ORDOÑEZ