COMMISSION REGULATION (EEC) No 1034/91

of 23 April 1991

imposing a provisional anti-dumping duty on imports of video tapes in cassettes 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 11 thereof,

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

Whereas :

A. PROCEDURE

(1) In November 1989 the Commission received a written complaint lodged by the European Council of Chemical Manufacturers' Federation (Cefic) on behalf of producers whose collective output of video tapes in cassettes (hereafter referred to as video cassettes) was stated to constitute a major proportion of Community production of the product in question. The complaint contained evidence of dumping of the products concerned originating in the People's Republic of China (PRC) and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

The Commission accordingly announced, by notice published in the *Official Journal of the European Communities* [2], the initiation of an anti-dumping proceeding concerning imports into the Community of VHS video tapes in cassettes falling within CN code ex 8523 13 00 and originating in the People's Republic of China and commenced an investigation.

(2) The Commission officially advised the exporters and impoters known to be concerned, the representatives of the exporting country and the complainant and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

Some Chinese exporters and all complainant Community producers made their views known in writing. A submission was also made by one importer.

(3) The Commission sought and verified all information it considered to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

(a) *Community producers :*

— AGFA Gevaert AG, München, Germany,

— BASF Aktiengesellschaft, Ludwigshafen, Germany,

— Magna Tonträger Produktions GmbH, Berlin, Germany,

— PD Magnetics BV, Oosterhout, Netherlands.

These Community producers are all members of Cefic.

(b) *Importer in the Community :*

Hamkong GmbH, Hamburg, Germany.

(4) The following exporters replied to the Commission's questionnaire which was sent to all known exporters on the initiation of the proceeding :

— Acme Cassette Manufacturing, Guangdong, PRC,

— Buji Bantian Oscar Video Products Fty, Bao An, PRC,

— Dongguan Changan Jiekou Magnetic Tape Factory, Dongguan, PRC,

— Fuzhou Fortune Video Tapes Co. Ltd, Fuzhou, PRC,

— Fuzhou Wonderful Video Tapes Co. Ltd, Fuzhou, PRC,

— Long Gung Xin Shen Fung Fu Plastic Mfg, Bao An, Guangdong, PRC,

— Nan-Hua Magnet Electricity Co. Ltd, Chencun, PRC,

— Shantou Ocean Audio-Video Gen. Corp., Shantou, PRC,

— Song Gang Hang Sing Cassette Factory, Song Gang, Shen Zhen, PRC,

— Zhuhai Zhong Xing Magnetics Co. Ltd, Guangdong, PRC.

Since the People's Republic of China is a non market economy country and, consequently, normal value could not be determined on the basis of Article 2 (3) of Regulation (EEC) No 2423/88, no investigation was carried out at the premises of these exporters.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 92, 11. 4. 1990, p. 6.

(5) An association of enterprises with foreign investments in China (joint ventures) requested and was granted a hearing.

(6) The investigation of dumping covered the period 1 January to 31 December 1989 (investigation period).

B. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT AND COMMUNITY INDUSTRY

1. Product under consideration

(7) The product concerned by the notice of initiation of the anti-dumping proceeding is referred to as VHS video tapes in cassettes of a width exceeding 6,5 mm (video cassettes).

(8) These video cassettes are generally manufactured under licence from JVC (Japan Victor Company) and are used in video cameras to take films, in video cassette recorders to record television programmes and to play back such programmes and pre-recorded films. There are different models of video cassettes with various tape lengths and quality differences. However, generally-acknowledged quality standards for each of these different models do not exist and their basic physical characteristics and their uses are identical.

2. Like product

(9) As far as the definition of the like product is concerned the Commission found that the video cassettes exported from the People's Republic of China to the Community are, apart from quality differences, alike in all respects to the Community-produced video cassettes.

3. Community industry

(10) The Commission found that during the period under consideration, the four Community producers on behalf of which the complaint was lodged, manufactured about 90 % of the total Community output of the like products, i.e. a major proportion of the total Community production.

(11) Accordingly, the Commission considered that they form the Community industry, within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

C. DUMPING

1. Normal value

(12) Since the People's Republic of China does not have a market economy, normal value had to be determined according to the criteria laid down in Article 2 (5) of Regulation (EEC) No 2423/88. For this purpose the complainant had proposed using the domestic prices of video cassettes in Japan or in the Republic of Korea as a basis for establishing normal value.

(13) As far as Japan is concerned, where considerable video cassette production is carried on, the Commission did not consider it reasonable to use Japan as suitable analogue market due to the difference in economic development of the People's Republic of China and Japan for the product concerned. In addition, informal contracts with several Japanese producers indicated that they were not prepared to cooperate with the Commission in establishing the normal value. The Korean producers contacted also refused to cooperate in the investigation.

(14) The Commission therefore had to find another suitable market economy for reference. Producers were contacted in Australia, Hong Kong, Malaysia, Philippines, Singapore, Taiwan and Thailand. None of these producers were willing to cooperate with the Commission's services in establishing the normal value. No other countries were proposed either by the Community industry or by the Chinese exporters. The Commission has detailed information on normal value concerning Hong Kong and South Korea by virtue of the investigation which resulted in imposition of a definitive anti-dumping duty by Council Regulation (EEC) No 1768/89 [1]. This information could not be used as it did not relate to the investigation period and it was not possible to update it in particular because of the refusal of companies in Hong Kong and South Korea to cooperate.

(15) To avoid any further delay in the proceeding, the Commission came to the conclusion that it had no choice but to establish the normal value in accordance with Article 2 (5) (c) of Regulation (EEC) No 2423/88, i.e. on the basis of the price payable in the Community for the like product. Indeed, this price is largely influenced by a large number of suppliers including some from Japan, South Korea and other countries.

(16) The weighted average price paid by the first independent customer in the Community of the model (the E180) most sold by the four complainants (which comprised 75 % of sales) was calculated and adjusted to include a reasonable profit margin,

[1] OJ No L 174, 22. 6. 1989, p. 1.

which was set at a 12 % return on sales. This margin of 12 % is in line with that used in Commission Regulation (EEC) No 4062/88 (1), which imposed a provisional anti-dumping duty on imports of video cassettes and video tape reels originating in the Republic of Korea and Hong Kong and confirmed in Regulation (EEC) No 1768/89.

(17) Some Chinese exporters put forward the view that their costs are far lower due to the outdated machinery and equipment used in the production process and therefore the normal value should be calculated on the basis of their own production costs. However, as the People's Republic of China is a non-market economy, it was not possible to establish the normal value on the basis of cost of production in the country of export.

2. Export price

(18) The Chinese exporters sell directly to independent importers in the Community and the export prices were therefore determined on the basis of the prices of the E180 model actually paid or payable for the products sold. The Commission took into account 70 % of all transactions during the investigation period by the Chinese exporters who responded to the questionnaire.

(19) An association representing enterprises with foreign investments in the People's Republic of China (joint ventures) claimed that these companies operate on a market economy basis and that they should be treated on an individual basis and therefore differently from the State-owned companies in the People's Republic of China. Although the joint ventures may operate to some extent on a market economy basis, the Commission considered for the purposes of these provisional findings that these companies were not sufficiently independent from the non market economy forces that prevail in the People's Republic of China to be distinguished from the other exporters. Indeed, these companies' costs of production are also largely influenced by the general economic environment prevailing in the People's Republic of China. It is therefore not possible to distinguish the effect of possible market forces from the effect which the intervention of the Chinese government exerts on this particular industry. Consequently, for the purpose of these provisional findings one uniform dumping margin was calculated for all exporters from the country in question.

(1) OJ No L 356, 24. 12. 1988, p. 47.

3. Comparison

(20) As far as selling expenses are concerned adjustments were made for the estimated costs between the final customer and the ex-factory level, such as transport, packing, credit and other selling expenses.

(21) Comparison was made at ex-factory basis and at the same level of trade. No differences in comparable physical characteristics could be found between the cassettes produced in the Community and the cassettes exported by the Chinese exporters. The Commission, however, took account of the fact that the Chinese cassettes are perceived by consumers as being of a lower quality than the Community-produced video cassettes. Therefore, an additional quality adjustment of 20 % was granted. It was considered that the consumers' perception of the value of Chinese video cassettes is equal to that for Hong Kong products for which an adjustment of 20 % was granted in Regulation (EEC) No 1768/89. Indeed the investigation showed that Chinese production of video cassettes is partly based on Hong Kong components and technology.

4. Dumping margin

(22) The preliminary examination of the facts showed the existence of dumping, the dumping margin being equal to the amount by which the normal value as established exceeds the price for export to the Community. Since the People's Republic of China is a non-market economy, a uniform dumping margin based on the weighted average of all exporters has been calculated. The weighted average dumping margin was calculated to be 122,9 %, expressed as a percentage of the total cif value of the exports concerned.

D. INJURY

1. Consumption and market share

(23) Consumption in the Community rose consistently from 167,7 million video cassettes in 1986, to 210,7 million in 1987, 247,5 million in 1988 and 281,6 million video cassettes in 1989.

(24) The Eurostat import statistics show that imports of video cassettes from the People's Republic of China increased from 0,74 million units in 1986 to 1,65 million in 1987, 7,73 million in 1988 and 38,67 million video cassettes in 1989. This represents respective yearly increases of 123 %, 368 % and 400 %.

(25) It is recalled that the Council imposed a definitive anti-dumping duty on imports of video cassettes from Hong Kong and South Korea by Regulation (EEC) No 1768/89. This has led to a reduction in the imports from these two countries from 1988 to 1989, for Hong Kong from 32,7 to 5,18 million video cassettes (fall of 89,6 %) and for South Korea from 70,31 to 53,22 million video cassettes (fall of 24,3 %). The increase in Chinese imports corresponds to the decrease in Hong Kong exports to the Community.

(26) During the period 1986 to 1989 the sales of the Community industry developed as follows: 51,2 million cassettes in 1986; 62,6 million in 1987; 76,7 million in 1988 and 78,0 million in 1989. This development represents a fall in the market share held by the Community producers from 30,5 % in 1986 to 27,7 % in 1989. During the same period the Chinese exporters increased their market share from 0,44 % in 1986 to 13,73 % in 1989. The Chinese market share increased in particular from 1988 to 1989 when the Community producers suffered the biggest reduction in market share.

2. Prices

(27) A price comparison was made on the basis of sales made by the Community industry and the exporters to independent customers during the investigation period. The average unit selling prices of the most basic models of the Community producers were compared with the prices of the comparable models of the Chinese exporters sold to unrelated customers. The Commission also took account of the fact that the Chinese video cassettes are perceived by the customers to be of a lower quality than the Community-produced cassettes. A quality adjustment of 20 % was therefore granted.

(28) This comparison showed price undercutting of 59,9 % during the reference period. Due to the high price elasticity of that market, this undercutting has prevented the Community from benefiting from the imposition of anti-dumping duty against imports of video cassettes from Hong Kong and the Republic of Korea and to achieve a reasonable level of profit.

(29) As far as the prices from the Community industry are concerned, the weighted average price of the most sold video cassette, the VHS E180, decreased by 28,6 % from 1986 to 1989.

3. Other economic factors

(30) The Commission found that the Community industry's production capacity had increased from 90,1 million cassettes in 1986 to 106,3 million in 1989, with a corresponding drop in the rate of utilization from 81,2 % in 1986 to 73,8 % in 1989. In the same period the Community producers' stocks of video cassettes increased from 13,8 in 1986 to 17,3 million video cassettes in 1989.

(31) The value of the Community industry's sales increased slightly during the period from ECU 251,2 million in 1986 to ECU 255,3 million in 1989. The prices obtained by the industry did not allow it to obtain a positive rate of profit on sales and in 1986, 1987 and 1988 losses of −1,55 %, −15,34 %, −0,84 % respectively were incurred while a profit rate of 1,86 % was achieved in 1989. Three of the Community producers still suffered losses in 1989 despite vigorous cost cutting measures.

(32) Employment in the Community industry fell from 3 958 jobs in 1986 to 3 179 jobs in 1989, a drop of 19,7 %.

4. Conclusion

(33) In order to determine whether the Community industry is suffering material injury in the sense of Article 4 (1) of Regulation (EEC) No 2423/88, the Commission noted that the prices, market share, utilization rate and employment for the Community industry all decreased during the last four years.

(34) Profits stayed at a very low level (1,86 % on turnover in 1989), despite strong efforts to reduce costs of production and despite the increase in production and sales and the consequent economies of scale.

(35) The market share of the Community industry has fallen since 1986, especially from 1988 to 1989 with a drop from 30,9 % to 27,7 % with a simultaneous (1988 to 1989) increase in the market share of the Chinese exporters from 3,12 % to 13,73 %. Given the above, the Commission considers that the Community industry is suffering material injury.

E. CAUSATION OF INJURY

(36) The Commission found that the drop in market share suffered by the Community industry, and the low rate of profitability achieved, coincided with significant increases in the volume of imports of Chinese video cassettes at very low prices. Since the video cassette market is a transparent and price-sensitive market the low prices of the dumped video cassettes have prevented the Community industry from increasing their prices and from

improving their financial situation after the imposition of a definitive anti-dumping duty on imports of video cassettes originating in the Republic of Korea and Hong Kong in June 1989.

(37) No other cause such as volume and prices of non-dumped imports were found to have caused injury.

(38) The Commission therefore considers that the dumped imports from the People's Republic of China, taken in isolation, have caused material injury to the Community industry.

F. COMMUNITY INTEREST

1. General consideration

(39) The purpose of anti-dumping duties is to eliminate dumping which is causing injury to the Community industry and thus to re-establish a situation of open and fair competition on the Community market which is in the general Community interest.

(40) While the Commission recognizes that the imposition of anti-dumping duties could affect price levels of the exporters concerned in the Community and subsequently may have some influence on the relative competitiveness of their products, it does not expect competition on the Community market to be considerably reduced by the taking of anti-dumping measures. On the contrary, the removal of the unfair advantages gained by the dumping practices of the Chinese exporters is designed to prevent the decline of the Community industry and thus to help to maintain the availability of a wide choice of products and to promote fair trading.

2. Interests of the Community industry

(41) Taking into account the material injury suffered by the Community industry, especially in terms of profitability and market share, the Commission considers that without protective measures against the dumped imports which have been shown to have caused material injury, the Community industry will continue to suffer losses in market share and low profitability. It should be noted that AGFA, after accumulation of heavy losses in the video cassette business over several years, has decided to sell its video cassette production sector to BASF.

(42) Any further continuation of the material injury to the Community industry would put several thousand jobs in the industry itself and related industries at risk.

(43) It should also be borne in mind tht the technologies of video cassettes and other magnetic and electronic products are closely related. Any loss of know-how would have serious repercussions on the whole industrial sector for electronic media. It is therefore in the Community interest to assure a viable Community industry in the video cassette sector.

(44) In addition, the Community market for video cassettes has not reached saturation and continued growth is expected. The Community industry has the capacity to meet any increase in demand, resulting from continued market growth and re-establishment of fair competitive conditions. This will enable the Community industry to benefit from its efforts in rationalizing and restructuring its production methods during the last few years. These efforts should be put at risk if the injurious dumping were allowed to continue.

3. Interests of other parties

(45) As far as the interests of consumers are concerned the Commission is aware that the prices of these exports from the People's Republic of China may increase. It should be considered, however, that consumers have no right to continue to take advantage of the effect of unfair trade practices. Furthermore anti-dumping duties are designed to prevent the disappearance of the Community industry due to unfair trading practices and thus to preserve the choice of consumers. Thus, anti-dumping measures are, at least in the medium term, in the interest of the consumers. Moreover, the re-establishment of fair market conditions by anti-dumping measures should, after a certain period, result in a decrease in prices for the consumers. Finally, the foreseeable price increases for video cassettes in the short term will probably have only a minor effect since video cassettes have to be used together with high-value video cameras and video cassette recorders or players. Therefore, the global financial burden on consumers will be minimal.

4. Conclusion

(46) In conclusion, after balancing the various interests involved, the Commission considers that the imposition of provisional measures in the present case will help to re-establish fair competition by eliminating the injurious effects of dumping practices, and is necessary to prevent any further aggravation of injury during the proceeding.

(47) The Commission considers that it is in the Community interest to impose anti-dumping measures in the form of a provisional anti-dumping duty.

G. DUTY

(48) In order to determine a level of duty which would eliminate the injury, the Commission calculated a target price for the model most sold by the Community industry, the VHS E180 (about 75 % of all sales). This target price was based on the weighted average cost of production of this model for the four Community producers and a target profit margin of 12 % on sales. When determining this margin, the Commission considered, on the one hand, the substantial investments in the past, and, on the other hand, the necessity for the Community industry to finance progress in video tape technology.

(49) Given the present low capacity utilization of the Community industry, such a profit margin of 12 % applied on the basis of the level of sales during the investigation period would, however, not be sufficient to eliminate injury in total becaue it would not take account of the loss of sales due to the dumping practices. Consequently, the Commission calculated the profit shortfall in absolute figures on the basis of the said target profit (12 %) and a reasonable capacity utilization, taken as that achieved by the Community industry in 1988, i.e. before the surge in Chinese exports. By expressing this profit shortfall as a percentage of the actual turnover of the Community industry, the margin was calculated which represents the necessary price increase (25,8 %) for the Chinese exports. This calculation was based on the average cif value of the Chinese imported VHS E180 model. The fact that the imported models had additional customs and freight costs and that the consumers' perception of Chinese products to be of lower quality, which justifies a lower price, was taken into account. Conversely, given the market conditions for video cassettes in the Community and the fact that the Chinese exporters are not price leaders, that Chinese video cassettes have no brand image and are of a lower quality, it was considered that such a price increase is sufficient in order to enable the Community industry to increase its prices and to become fully profitable again.

(50) The Community industry has argued that a target profit of 15 % should be used in the calculation of the injury. In addition the price undercutting of the Chinese exporters should, according to the industry, be substantially reduced in order to remove the injury suffered by the Community industry.

(51) The Commission has carefully considered these arguments but is of the opinion that it would discriminate against the Chinese exporters were it to set a higher target profit rate than in previous cases concerning the same products, which was not contested by the Community industry. The Commission therefore rejects this claim.

(52) In light of the above findings the Commission considers the imposition of a provisional anti-dumping duty of 25,8 % on video cassettes originating in the People's Republic of China to the appropriate.

(53) A period should be fixed within which the parties concerned may make their views known and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of video tapes in cassettes falling within CN code ex 8523 13 00 (TARIC code : 8523 13 00*12) and originating in the People's Republic of China.

2. The rate of duty, applicable to the net free-at-Community-frontier price before duty, shall be 25,8 %.

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

4. The release for free circulation in the Community of the goods mentioned in paragraph 1 shall be conditional on the deposit of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, parties concerned may make known their point of view in writing and request a hearing from the Commission within one month of the entry into force of this Regulation.

Article 3

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

Subject to the provisions of Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation shall apply for four months, unless the Council adopts definitive measures before the expiry of this period.

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

Done at Brussels, 23 April 1991.

For the Commission
Frans ANDRIESSEN
Vice-President