COMMISSION REGULATION (EEC) No 2805/91

of 23 September 1991

imposing a provisional anti-dumping duty on imports into the Community of certain thermal paper originating in Japan

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 consultations within the Advisory Committee as provided for pursuant to the above Regulation,

Whereas :

A. PROCEDURE

(1) In October 1990, the Commission received a written complaint lodged by Wiggins Teape Thermal Papers Limited which represents a major proportion of the Community production of thermal paper. The complaint contained evidence of dumping of the product concerned originating in Japan and of material injury resulting therefrom. This evidence was considered sufficient to justify the initiation of a proceeding.

(2) The Commission accordingly announced by means of a notice published in the *Official Journal of the European Communities* [2] the initiation of an anti-dumping proceeding concerning imports into the Community of certain thermal paper originating in Japan, falling within CN codes ex 3703 90 90 and ex 4810 11 90, and commenced an investigation.

(3) The Commission officially advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainants. Parties directly concerned were given the opportunity to make their views known in writing and to request a hearing.

(4) Several known importers, exporters and producers in Japan made their views known in writing. Renker GmbH & Co. KG, a Community producer, also made its views known in writing. However, this information could not be taken into consideration because it was submitted outside the deadline set in the notice of initiation and thus to do so would have unduly delayed the conduct of the investigation.

Moreover, five out of nine known producers in Japan did not provide the necessary information requested by the Commission. Submissions and representations were also made by some Community processors of the product concerned.

Several producers/exporters requested and were granted hearings.

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

(a) *Community producer*

— Wiggins Teape Thermal Papers Ltd, Lincoln, United Kingdom ;

(b) *Producers/exporters in Japan*

— Producers

Jujo Paper Co. Ltd, Tokyo,

Kanzaki Paper Manufacturing Co. Ltd, Tokyo,

Mitsubishi Paper Mills Ltd, Tokyo,

Tomoegawa Paper Co. Ltd, Tokyo,

— Exporters

Japan Pulp and Paper Company Ltd, Tokyo,

Marubeni Corporation, Tokyo,

Mitsubishi Corporation, Tokyo,

Mitsui and Company Ltd, Toyko ;

(c) *Importers in the Community*

— Germany	Mitsubishi International GmbH, Düsseldorf, Japan Pulp and Paper GmbH, Düsseldorf,
— Netherlands	Tomoegawa Europe BV, Amsterdam,
— United Kingdom	Mitsubishi Corporation, London.

(6) The Commission requested and received detailed written and oral submissions from the complainant Community producer, from four out of nine known producers in Japan and from the exporters and

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 16, 24. 1. 1991, p. 3.

importers mentioned above. The other five known producers in Japan chose not to reply to the Commission's questionnaire, although one of them asked for, and was granted, a hearing.

(7) The investigation concerning dumping covered the period from 1 April to 31 December 1990 (investigation period).

B. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT

(8) The notice of initiation of this proceeding referred to 'thermal paper coated with chemicals which react to the application of heat by displaying an image and is destined to be used in machines which transmit and receive documents electronically and which print facsimiles of the documents'. The investigation showed, however, that thermal paper other than that destined to be used in telefax machines is also capable of being used in such machines since the basic physical characteristics of this paper are identical to the paper destined for telefax machines. Nevertheless, for the purposes of the imposition of a provisional anti-dumping duty the product concerned is taken to be thermal paper destined to be used in telefax machines (hereinafter called 'fax paper').

(9) Fax paper can be presented in two different forms, namely 'jumbo reels' and 'coils'. In general, jumbo reels are large bulk rolls which ultimately are 'converted' (i.e. slit, cut, etc.) into smaller sizes (coils). The coils are then capable of being used directly in fax machines.

Both jumbo reels and coils are available in different grades. All grades are considered to be like products.

(10) One Japanese producer claimed that jumbo reels are different from coils and they should therefore be considered as constituting two separate products.

The investigation, however, showed that the only differences between fax paper in coils and in jumbo reels is the result of the splitting and cutting process and that the jumbo reels are therefore already at a very late stage of the production process of thermal paper. Moreover, the thermal paper does not undergo any change to its basic technical characteristics. The product itself, as fax paper, remains the same. Therefore, both presentations of thermal paper should be considered as forming one product for the purpose of the provisional proceeding.

(11) The product produced and sold by the Community industry has the same characteristics, same difference in grades and is in all its properties equivalent to the product originating in Japan.

(12) The Commission considered, therefore, that the fax paper produced and sold by the Community manufacturers either in jumbo reels or in coils forms one single category of product and, within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88, constitutes a product alike in all respects to the product imported from Japan.

C. DUMPING

1. General

(13) The Japanese producers/exporters of fax paper use a variety of sales and distribution channels for domestic sales as well as for exports.

On the domestic market most producers sell through related companies. For exports, however, so-called 'trading houses' often serve as intermediate companies, although the producers almost always know the foreign destination of the goods.

2. Normal value

(14) Normal value was provisionally determined for the product sold on the Japanese market on the basis of fax paper which was identical to the best-selling grades (i.e. those accounting for at least 70 % by volume of each company's exports), shipped to the Community during the investigation period.

The normal value for the production companies was determined on the basis of the weighted average prices of sales of fax paper on the domestic market to the first unrelated buyer, net of all discounts and rebates directly linked to such sales. It was established whether these sales were made in the normal course of trade and whether the volume of such sales was equivalent to at least 5 % of the export volume to the Community for the type concerned.

Where the volume of domestic sales of a particular type was less than 5 % of the volume exported to the Community, the Japanese domestic selling price of a comparable type was, wherever possible, taken as the basis for normal value.

(15) However, where :

— the Japanese domestic selling price of an identical or comparable type was less than the cost of production of the identical type, or

— the quantity of the comparable type sold on the Japanese market was less than 5 % of the quantity of the type exported to the Community,

normal value was constructed on the basis of the cost of manufacture of the type sold domestically plus an amount for selling, general and administrative expenses calculated by reference to the expenses incurred by the producer, plus an average actual profit of 18 % calculated by reference to the profitable sales of like products by the producer or, where warranted, by other producers in the country of origin. This profit was considered reasonable since it was based on actual profit achieved by the Japanese producers investigated.

3. Export price

(16) In the case of sales made by the producers (or their related trading houses in Japan) to related subsidiaries in the Community, export prices were constructed on the basis of resale prices to the first independent buyer in the Community, adjusted to take account of all costs incurred between importation and resale, including customs duties and a profit margin of 6 %. For the purpose of provisional findings and in the light of profits achieved for similar products, this percentage was considered reasonable.

(17) In the case of sales made by the producers (or their related trading houses in Japan) directly to unrelated customers in the Community, export prices were established on the basis of the prices paid or payable by the importer net of all taxes, discounts and rebates.

(18) Allowances for transport, packing and handling necessary for constructing exporters' prices were, in view of the nature of the product, made on a quantity basis. Allowances for selling, general and administrative costs (SGA) were based on turnover. Discounts or rebates, given by the related importer to an independent buyer, were also taken into account when constructing export prices.

4. Comparison

(19) For the purpose of a fair comparison between normal value and export price and in accordance with Article 2 (10) (c) of Regulation (EEC) No 2423/88, adjustments have been made to both normal values and export prices in order to take account of selling expenses mentioned in Article 2 (10) and enable them to be compared at the same level of trade. Certain companies claimed allowances for general overheads and expenses. Consistent with the provisions of Article 2 (9) of the abovementioned Regulation, no allowance was made for such expenses if a direct relationship to the sales under consideration could not be satisfactorily demonstrated.

Normal value for the domestically sold types were compared with the export price of comparable types on a transaction-by-transaction basis.

5. Dumping margins

(20) The dumping margins were calculated as being the total amount by which the normal values exceeded the prices for exports to the Community.

(21) The margins of dumping established and expressed as a percentage of the total cif value of the imports were as follows :

Jujo Paper Co. Ltd, Tokyo	0,0 %,
Kanzaki Paper Manufacturing Co. Ltd, Tokyo	10,3 %,
Mitsubishi Paper Mills Ltd, Tokyo	24,7 %,
Tomoegawa Paper Co. Ltd, Tokyo	24,8 %.

(22) This case has been characterized by the non-cooperation of a significant proportion of the Japanese companies concerned. The Commission has therefore had serious doubts as to whether the results of the dumping investigation for the four producers who cooperated were really representative for the other production companies. In these circumstances, the Commission considered that it would not be appropriate to apply the dumping margins found for the cooperating firms to those companies which did not cooperate.

(23) Therefore, for those producers which did not reply to the Commission's questionnaire, in accordance with Article 7 (7) of Regulation (EEC) No 2423/88 the Commission established the dumping margin on the basis of the facts available.

In this case, for the provisional findings, it was considered that the data contained in the complaint provided the most reasonable basis for establishing the dumping margin, and is therefore fixed at 55,3 %.

D. INJURY

1. Volume of Community market and market shares of dumped imports

(24) In view of the high degree of non-cooperation by the Japanese companies, all figures such as import volumes, values and market share are, by necessity, estimates. To arrive at these estimated figures, the Commission has taken into account the results of independent market studies.

(25) As regards market volume, estimated consumption of fax paper in the Community showed a rapid rise from 5 500 tonnes in 1987 to 35 000 tonnes in 1990 (six-month figure projected to a full year), an increase of 536 %.

(26) Estimated dumped imports of fax paper of Japanese origin rose from 1 725 tonnes in 1987 to 23 750 tonnes in 1990, an increase of 1 276 %. It should be noted, however, that approximately half of this increase occurred between 1989 and the investigation period. This development represents a rise in market share held by the dumped imports from 31 % in 1987 to 68 % in 1990, an increase of 119 %.

2. Resale prices of imports and undercutting

(27) As regards the prices of dumped imports in the Community, the Commission noted that these dropped by approximately 30 % during the period January to December 1990.

(28) With regard to price undercutting, the Commission compared the exporters' and the Community producers' weighted average selling prices, free of all rebates and taxes, calculted on the basis of sales to the first unrelated customer. The Community average selling price was then compared to the corresponding figures for each exporter concerned on the basis of their resale prices in the Community and weighted in respect of sales volume.

(29) One exporter raised the question of price comparison at resale level to the first independent buyer in the Community. It was argued that its sales (coils of fax paper) were not made at the same level of trade as that of the complainant (jumbo reels). The Commission, in order to ensure a fair comparison, adjusted the sales price of coils to those of the level of jumbo reels by taking into account all the conversion related costs and profits. Also, the difference in level of trade has been taken into account in the adjustments.

Using these methods of comparison, the Commission found that during the investigation period sales prices of fax paper of Japanese origin undercut those of the Community industry by up to 22,8 %.

3. Situation of Community industry

(a) Production, capacity, utilization rate and stocks

(30) The Commission established that the Community output of fax paper increased overall between 1987 and 1990, however, taking 1989 and the investigation period in isolation, it dropped by 8,5 %.

(31) The total capacity of the Community industry between 1987 and the investigation period showed an increase. Total capacity utilization, however, dropped considerably.

(32) No major changes in stock levels were observed between 1987 and the investigation period.

(b) Sales

(33) Between 1987 and the investigation period, the sales volume of the Community industry rose by 255 %. However, this increase was not in line with the much higher growth rate of the Community market (see recital 25). Moreover, between 1989 and the investigation period, the sales increase by volume of the Community industry was only 3 % whereas the total Community market showed a growth of 39 %.

(c) Market share

(34) The absence in the investigation of the relevant data from the majority of Japanese producers made estimates of the total size of the Community market necessary. On this basis, the market share of the complainant dropped by approximately 4 % between 1989 and the investigation period.

(d) Prices

(35) Sales prices of the Community industry went steadily downwards between 1989 and the end of 1990. The Community industry was only able to limit its loss of market share by matching the prices being set in the market by the dumped imports. Using the index 1989 — 100 as a basis, prices of the Community products in question were 71 during the investigation period.

(e) Profitability

(36) The Commission found that the financial results of the Community industry deteriorated between 1989 and the investigation period. Until the end of 1989, the Community industry was running at profit levels which were considered reasonable. However, the severe drop in prices which started at the end of 1989 led to substantial losses being sustained during the investigation period.

4. Conclusion on injury

(37) In view of the above factors, the Commission considers that the Community industry has suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88, mainly in the form of reduced profits and loss of market share caused by price depression and undercutting.

E. CAUSALITY

1. Effects of dumped imports

(38) The Commission's investigation showed that growth of dumped imports at continuously decreasing prices coincided with the deterioration of the Community industry's prices. Given the price transparency of the market, these low prices of the Japanese exports clearly had a depressive effect on the price levels of the Community industry. In addition, as the Community industry was unable to lower its prices further in order to match those being set in the market by the dumped imports in question, it lost market share. It was thus further deprived of the benefit of the boom in demand which occurred between 1987 and 1990 and the economies of scale which would have resulted from increased sales volume. All these elements put the Community industry into an increasingly disadvantageous position.

(39) One exporter argued that the drop in price was due to better technology and know-how being used, thus leading to a reduction in production costs.

In addition, some Japanese exporters argued that the productivity of the Community industry is lower and claimed that this element should be taken into consideration when assessing injury. The Commission disagrees with this opinion. It should be recalled that the Community industry was prevented by the dumped imports from benefitting from cost advantages due to economies of scale in view of the booming thermal paper market. In addition, cost advantages of an exporter, if any, are relevant in an anti-dumping proceeding only in so far as they are reflected in export as well as in domestic prices without any discrimination between the two. Indeed, if they had not practised dumping, Japanese exporters, whose prices in the Community are below production costs, would have charged considerably more. Accordingly, the Community industry would then have been able to sell at prices which allowed them to make a reasonable profit.

2. Other factors

(40) With regard to other factors, it appeared that the volume and prices of imports originating in other third countries could not be considered responsible for the injury found since such imports were negligible in terms of the overall size of the Community market for fax paper. No indication of price undercutting by these imports has been found.

F. COMMUNITY INTEREST

1. General considerations

(41) Elimination of unfair business practices through anti-dumping measures will re-establish fair competition in the Community. In the present circumstances, indeed, the Japanese companies sell below cost and are found to be dumping. If the rapid price decrease of dumped imports from Japan is not halted and if profitable prices levels are not restored, the Community fax paper industry will face a further deterioration of its already weakened position with the strong possibility of total shutdown. The negative results of such an eventuality would leave the Community without a high-tech industry and with the consequent loss of research, development and employment. When these negative consequences are balanced with the short-term interests of end-users who would benefit from supplies of fax paper at lower prices, it is evident that the Community interest lies more in sustaining over the long term a viable industry in this sector. Moreover, a price increase for fax paper would normally have a negligible effect on the total operational costs incurred by companies and public bodies (who form the major end-users for fax paper).

2. Converters

(42) Some of the importers concerned alleged that the imposition of measures and the consequent price increases on the Community market would force converters out of business. However, it was found that the converters, as an intermediary, would be able to pass on the price increases resulting from anti-dumping duties to the next company in the chain and then all the way through to end-user/consumer level.

(43) Taking into account all the elments involved, it is in the best interest of the Community to protect the industry concerned.

G. PROVISIONAL DUTY

(44) In order to eliminate the injury being suffered by the Community industry during the proceeding, their profitability must be restored. Consequently, the Community industry should be put in a position where it is able to increase its selling prices in order to achieve this.

(45) The Commission has therefore calculted a target price for the most representative types of fax paper produced by the Community industry based on the actual weighted average costs of production of the types in question plus a reasonable profit margin.

(46) The Commission considers that an 18 % profit before tax is, in view of the relatively short technical life cycle of fax paper, the minimum necessary to cover, *inter alia,* investments in manufacturing facilities and research and development. This profit margin is also in line with that realized by the Japanese producers on their domestic market.

(47) The Commission has calculated the difference between the actual selling prices of the Japanese imports in the Community and the injury threshold of the Community industry, i.e. cost of production plus a reasonable profit margin.

(48) Using this method, the greatest difference expressed on a cif Community-frontier basis calculated for the companies which cooperated with the Commission's investigation was 54,9 %. The individual differences calculated for each Japanese company exceeded the dumping margins found for those companies. Consequently, the duty to be imposed for these companies should correspond to the dumping margins found, i.e.:

Jujo Paper Co. Ltd, Tokyo	,0 %,
Kanzaki Paper Manufacturing Co. Ltd, Tokyo	10,3 %,
Mitsubishi Paper Mills Ltd, Tokyo	24,7 %,
Tomoegawa Paper Co. Ltd, Tokyo	24,8 %.

(49) As mentioned in recital 4, a feature in this case has been the non-cooperation of serveral Japanese producers who account for approximately 30 % of imports into the Community of fax paper originating in Japan.

As far as these non-cooperating companies are concerned, the Commission considered that the duty to be imposed on these companies should be based on the facts available. In this case it is the highest difference found between Japanese selling prices in the Community and the injury threshold of the Community industry established, i.e. 54,9 %, which is less than the dumping margin calculated for these companies (see recital 23).

(50) A period should be fixed within which the parties concerned may make their views known in writing 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 thermal paper destined to be used in facsimile machines, originating in Japan and falling within CN codes: ex 3703 90 90 (Taric code 3703 90 90* 10), ex 4810 11 90 (Taric code 4810 11 90* 10).

2. The rate of anti-dumping duty for products specified in paragraph 1 shall be 54,9 % (Taric additional code: 8602) expressed as a percentage of the net free-at-Community-frontier price before duty, except when manufactured by the following companies for whom the rate of anti-dumping duty expressed as a percentage of the net free-at-Community-frontier price before duty is set out below:

— Kanzaki Paper Manufacturing Co. Ltd, Tokyo (Taric additional code 8598)	10,3 %
— Mitsubishi Paper Mills Ltd, Tokyo (Taric additional code 8599)	24,7 %
— Tomoegawa Paper Co. Ltd, Tokyo (Taric additional code 8600)	24,8 %

No anti-dumping duties will apply to Jujo Paper Co Ltd, Tokyo, (Taric additional code 8601).

Article 2

Without prejudice to Article 7 (4) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within 30 days from the date of entry into force of the Regulation.

Article 3

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

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

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

Done at Brussels, 23 September 1991.

For the Commission

Frans ANDRIESSEN

Vice-President