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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1292/92

of 18 May 1992

amending Regulation (EEC) No 1768/89 with regard to a definitive anti-dumping duty on imports of video cassettes originating in Hong Kong

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 14 thereof,

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

Whereas :

I. PREVIOUS PROCEDURE

(1) In Regulation (EEC) No 1768/89 (2), the Council imposed in particular a definitive anti-dumping duty of 21,9 % on imports of VHS video tape in cassettes falling within CN code ex 8523 13 00 originating in Hong Kong, with the exception of imports from several exporters specifically mentioned which were subject to a lesser rate of duty or no duty at all.

(2) In recital 43 of Regulation (EEC) No 1768/89, with regard to the problem of companies which started or will start exporting own-produced video cassettes to the Community after the investigation period (newcomers), the Council noted that the Commission was ready to initiate without delay a review proceeding whenever the exporting company could show the Commission, and supply to that effect sufficient evidence, that it did not export the products concerned to the Community during the period of investigation. The company also had to demonstrate that it only started those exports after the said period and that it was not related to or associated with any of the companies subject to the investigation.

II. REVIEW PROCEDURE

(3) By a notice published on 11 January 1991 (3) the Commission, after consultation with the Advisory Committee and in accordance with Article 14 of Regulation (EEC) No 2423/88 initiated a review of Regulation (EEC) No 1768/89 with regard to a Hong Kong company, Wai Shing. This company had submitted that it did not export the products subject to the anti-dumping duty during the previous period of investigation (1 January — 30 November 1987). In addition, it submitted that it was not related to any of the companies subject to the previous investigation for which dumping was found and provided substantiated evidence that it had just begun to export video cassettes to the Community. Accordingly, the Commission commenced an investigation in order to verify whether Wai Shing could be considered as a newcomer and to establish a dumping margin, if any, for that company.

III. RESULTS OF THE INVESTIGATION

1. Newcomer

(4) The investigation showed that Wai Shing began to export own-produced video cassettes to the Community after the previous investigation period mentioned in recital 3. In addition, it was found that this company had no link of any sort with the exporters involved in the previous procedure and

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 174, 22. 6. 1989, p. 1 ; Regulation as amended by Regulation (EEC) No 3522/90 (OJ No L 343, 7. 12. 1990, p. 1).

(3) OJ No C 7, 11. 1. 1991, p. 2.

for which dumping was found. The Council confirms that it should accordingly be considered as a newcomer and that a partial review of Regulation (EEC) No 1768/89 with regard to Wai Shing was warranted.

2. Normal value

(5) Since Wai Shing did not sell any video cassettes on the domestic market during the investigation period for this review, normal value was determined on the basis of the constructed value of the models concerned in accordance with Article 2 (3) (b) of Regulation (EEC) No 2423/88. This constructed value was computed on the basis of all costs, both fixed and variable, in the country of origin, of materials and manufacture for the models exported to the Community plus a reasonable amount for selling, administrative, other general expenses and profit.

(6) As far as selling, administrative and general expenses were concerned, they were calculated by reference to such expenses incurred by another Hong Kong manufacturer for its sales of video cassettes on the domestic market, since it was verified that these expenses corresponded to such costs as entered in the audited accounts of Wai Shing.

As far as profit was concerned, it was found appropriate to apply a profit rate of 8 % on turnover; this rate was used in Regulation (EEC) No 1768/89 for the Hong Kong exporters and, according to the information available to the Commission, can still be regarded as the profit that Hong Kong companies can normally achieve on their domestic market. The Council confirms the foregoing findings.

(7) On this basis, normal value was established for the models exported to the Community and for the three qualities of tapes used by Wai Shing, namely normal grade, high grade and super high grade.

3. Export price

(8) Export prices were determined on the basis of the prices, net of all rebates, actually paid or payable for the video cassettes sold for export by Wai Shing to the Community. Indeed, since exports were made directly to independent importers in the Community, these export prices were found to be reliable.

The Council confirms this finding.

4. Comparison

(9) For the purpose of a fair comparison between normal value and export price, the Commission took account of differences affecting price comparability in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88. All comparisons were made at ex-works level, at the same level of trade and, for the export price, on a transaction by transaction basis.

The examination of the facts shows the existence of dumping, the margin of dumping being equal to the amount by which normal value exceeds the price for export to the Community, which, as expressed as a percentage of total cif value, was 13,8 %.

The Council confirms the above findings.

IV. AMENDMENT OF THE REVIEWED MEASURES

(10) No new investigation was carried out as regards injury since this was not requested. In addition, the Commission considers that the injury findings established in Regulation (EEC) No 1768/89 are still valid. Therefore, since the price increase which would be required to eliminate the injury level exceeds the dumping margin found for the company concerned, as established in Regulation (EEC) No 1768/89 (recital 71), the duty to be imposed should correspond to the dumping margin.

(11) The complainants and Wai Shing were informed of the essential facts and considerations on the basis of which it was intended to propose the replacement of the duty imposed by Regulation (EEC) No 1768/89 in respect of Wai Shing by an anti-dumping duty established on the basis of the above and were given every opportunity to comment. After this disclosure, Wai Shing offered a price undertaking.

However, in the light of the economic structure of the exporter, in particular the fact that it supplies and exports to the Community video cassettes of various origins, and given the evolution of the trade flows for this product from Hong Kong, the monitoring of such undertaking would not be manageable. Therefore, the Commission considered, after consultation, that the undertaking offer submitted by Wai Shing was not acceptable.

(12) In addition, the Commission found that the prices of video cassettes originating in Hong Kong were subject to a high degree of volatility. Commission thus considered that, for the models investigated, the duty should take the form of a variable duty equal to the difference between price per cassette net, free-at-Community-frontier, not cleared through customs, and a floor price established on

the basis of the normal value for each individual model. Since it cannot be excluded that the exporter will also export models which were not covered by the investigation, it appears appropriate to establish an *ad valorem* duty at the level of the dumping margin found for all other video cassettes exported to the Community by this company. The Council confirms the above findings.

(13) Accordingly, it is considered appropriate that Regulation (EEC) No 1768/89 should be amended in respect of Wai Shing and that, until the Regulation's expiry, a definitive anti-dumping duty shall be imposed on VHS video tapes in cassettes manufactured by Wai Shing and originating in Hong Kong in respect of the models E-30, E-60, E-90, E-120, E-180, E-195 and E-240, whether normal grade, or high grade or super high grade. This duty shall be equal to the difference between a floor price based on this normal value and their net, free-at-Community-frontier price, before duty, payable by the first importer. All other models of video cassettes manufactured by Wai Shing and originating in Hong Kong shall be subject to a duty of 13,8 % *ad valorem,*

HAS ADOPTED THIS REGULATION:

Article 1

The following subparagraph shall be added to Article 1 (3) of Regulation (EEC) No 1768/89:

'The duty specified in paragraph 2 (b) shall not apply to models of video tape in cassettes E-30, E-60, E-90, E-120, E-180, E-195 and E-240 in quality normal grade (NG), high grade (HG) or super high grade (SHG) as specified hereafter and manufactured and sold for export to the Community by Wai Shing (Hong Kong) (Taric additional Code 8255); these models shall instead be subject to a duty equal to the difference between the price mentioned hereunder for each of the models concerned and their net, free-at-Community-frontier price, before duty:

		Ecu	Additional Taric Code
E30	SHG	0,55	8626
E60	SHG	0,68	8627
	HG	0,66	8628
E90	SHG	0,81	8629
E120	SHG	0,94	8630
	HG	0,85	8631
E180	SHG	1,20	8632
	HG	1,13	8633
	NG	1,10	8634
E195	SHG	1,27	8635
	HG	1,20	8636
E240	SHG	1,47	8637
	HG	1,36	8638

For all other video tapes in cassettes produced by Wai Shing the duty shall be 13,8 % of their net, free-at-Community-frontier price, before duty.'

Article 2

This Regulation shall enter into force on the day following that of 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, 18 May 1992.

For the Council

The President

Arlindo MARQUES CUNHA