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*(Acts whose publication is obligatory)*

# COUNCIL REGULATION (EEC) No 729/92

## of 16 March 1992

## imposing a definitive anti-dumping duty on imports of certain thermal paper originating in Japan and definitively collecting the provisional anti-dumping duty

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 under the above Regulation,

Whereas :

### A. Provisional measures

(1) The Commission by Regulation (EEC) No 2805/91 (2), imposed a provisional anti-dumping duty on imports into the Community of certain thermal paper originating in Japan and falling within CN codes ex 3703 90 90 (Taric code : 3703 90 90 * 10) and ex 4810 11 90 (Taric code : 4810 11 90 * 10). Council Regulation (EEC) No 103/92 (3) extended the duty for a period not exceeding two months.

### B. Subsequent procedure

(2) Following the imposition of the provisional anti-dumping duty, the interested parties who so requested were granted an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.

(3) Parties were informed in writing of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.

(4) The oral and written comments submitted by the parties were considered and where appropriate, the Commission findings were modified to take account of them.

### C. Product

(5) In view of observations made by the Customs administrations of certain Member States concerning problems at import clearance, the Commission re-examined the product description given in recital 8 of Regulation (EEC) No 2805/91. It was found that the expression 'thermal paper... destined to be used in machines ... which print facsimiles ...' was inadequate and should be replaced by the term 'telefax paper'. The Council supports the Commission's view.

(6) One Japanese producer reiterated the points it made prior to the imposition of provisional duties, namely that telefax paper presented in jumbo reels or coils constitutes two separate products and that its exports of coils were not causing injury to the Community industry. The Council, however, supports the Commission's view that telefax paper in the form of jumbo reels and coils constitutes one single category of product and it confirms the conclusions of recitals 10 to 12 of Regulation (EEC) No 2805/91.

(7) During the Commission's investigation, it was found that, apart from the CN codes indicated in the notice of initiation of the proceeding (4), several

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 270, 26. 9. 1991, p. 15.
(3) OJ No L 11, 17. 1. 1992, p. 33.
(4) OJ No C 16, 24. 1. 1991, p. 3.

other codes were also being used for imports into the Community of the product concerned.

Accordingly, the Commission services published a notice (1) advising the parties known to be concerned of the inclusion of these other CN codes in the proceeding.

There was no reaction from interested parties to this notice.

As a result also of the discussions held subsequent to the initiation of this proceeding at the level of the Customs Cooperation Council (CCC) concerning the correct classification of telefax paper, the Council of the European Communities confirms the Commission's view that measures should also apply to all CN codes under which the product under consideration can, within the framework of existing customs legislation, be imported.

The Commission has therefore concluded that the information that it possesses and has verified constitutes a valid basis for the establishment of dumping margins, the assessment of injury and the calculation of appropriate duties for the product falling under all the CN codes concerned.

## D. Dumping

(8) In the light of its own overall net profit, one Japanese company claimed that the reasonable profit of 18 % on cost of production used for constructing normal value was too high. The profit margin for this company's profitable sales, calculated in accordance with Article 2 (B) (3) (b) (ii) of Regulation (EEC) No 2423/88, was indeed found to be less than the 18 % margin used. Accordingly, the percentage of profit used for constructing normal value for this company has, where necessary, been reduced.

For the remaining companies, the Council considers that, in view of their profitability during the investigation period, 18 % is a reasonable profit margin for constructing normal value and confirms the conclusions set out in recitals 13 to 23 of Regulation (EEC) No 2805/91.

No further information was received, and the Council therefore confirms that the definitive weighted average dumping margins expressed as a percentage of the cif value for each of the companies concerned are as follows :

— Jujo Paper Co., Ltd, Tokyo : 0,0 %,

— Kanzaki Paper Manufacturing Co., Ltd, Tokyo : 10,3 %,

— Mitsubishi Paper Mills Ltd, Tokyo : 15,5 %,

— Tomoegawa Paper Co., Ltd, Tokyo : 24,8 %.

The Council confirms the Commission's findings with regard to the 55,3 % dumping margin calculated for the purposes of the residual duty.

## E. Injury and cause of injury

(9) No new elements concerning injury were submitted to the Commission following the publication of Regulation (EEC) No 2805/91. The Council therefore confirms the conclusions set out in recital 37 of Regulation (EEC) No 2805/91.

(10) As far as cause of injury is concerned, one Japanese producer claimed that the impact of its sales to the Community should be examined in isolation and deemed not to have caused injury, as the volume of its exports was small.

(11) The Commission, in accordance with the findings of the Court of Justice, considers that the Community authorities should examine the impact on the Community industry of all dumped imports taken togethter, even if the export volume of an individual company is relatively low.

The Council therefore confirms the Commission's view that, for the purpose of determining injury, the exports of this company should not be treated separately from those of the other Japanese companies.

## F. Community interest

(12) No new arguments concerning Community interest were brought forward, and the Council therefore confirms the Commission findings set out in Section F of Regulation (EEC) No 2805/91 and considers that it is in the Community's interest to impose anti-dumping measures to eliminate the injurious effects of dumped imports originating in Japan.

## G. Duty

(13) With regard to the calculation to determine the duty rate necessary to eliminate the injury being suffered by Community industry, the Commission considers that the difference between the actual selling price in the Community of the Japanese product and a sales price which enables Community industry to achieve an 18 % profit on turnover, should be removed.

(14) For the reasons given in recital 46 of Regulation (EEC) No 2805/91, an 18 % profit margin is the minimum necessary to render possible additional investments in manufacturing facilities and

(1) OJ No C 334, 28. 12. 1991, p. 7.

research and development. Taking into account the fast changing nature of the industry concerned and the continual need to adapt paper to suit new hardware, the Commission is of the opinion that, without this profit margin, the deterioration of the situation of the Community industry would inevitably be exacerbated and the injury caused by dumping would remain.

(15) The Council therefore confirms the Commission findings with regard to the injury threshold established in Regulation (EEC) No 2805/91 ; however, as the injury correction figures calculated for the cooperating companies are higher than the dumping margins established, it is the latter which are to be the basis for applying the duty. With regard to the residual duty, the injury correction figure was less than the dumping margin and the former will therefore be taken into account.

(16) On the basis of calculations of dumping and injury described in Regulation (EEC) No 2805/91 and the submissions subsequently received, the Council therefore concludes that duties should be imposed to eliminate the level of dumping found for Kanzaki Paper Manufacturing Co., Ltd, Mitsubishi Paper Mills Ltd and Tomoegawa Paper Co., Ltd. No duty should be applied to Jujo Paper Co., Ltd, which was found not to be dumping.

(17) As far as the other companies are concerned, the Council, for the reasons given in recital 49 of Regulation 2805/91, confirms that, as provided for in Article 7 (7) (b) of Regulation (EEC) No 2423/88, the duty to be imposed on these companies should be based on the facts available.

(18) The Commission has noted a continuing decline in import prices and therefore considers anti-dumping duty in *ad-valorem* form to be inappropriate to remedy the injury caused to the Community industry. The Council agrees and concludes that a specific duty, calculated and applied on a weight basis, would be more appropriate.

(19) Accordingly, the amount of anti-dumping duty for the product under consideration shall be ECU 1 275,15 per tonne (net weight), except when manufactured by the following companies, for whom the amount of anti-dumping duty is set out below :

— Kanzaki Paper Manufacturing Co., Ltd : ECU 211,55 per tonne (net weight),

— Mitsubishi Paper Mills Ltd : ECU 395,00 per tonne (net weight),

— Tomoegawa Paper Co., Ltd : ECU 563,75 per tonne (net weight).

No anti-dumping duties should apply to goods manufactured by Jujo Paper Co., Ltd.

## H. Undertaking

(20) One Japanese producer, Tomoegawa Paper Co. Ltd has offered an undertaking which is considered acceptable. The undertaking will increase the price of the products in question to a level sufficient to eliminate the dumping established by the Commission.

Following consultations with the Member States, the undertaking was accepted by Commission Decision 92/177/EEC [1].

## I. Collection of the provisional duties

(21) In view of the size of the dumping margins established and of the serious nature of the injury caused to the Community industry, the Council considers it necessary that the amounts secured by way of the provisional anti-dumping duty for all companies should be collected definitively to the extent of the amount of the definitive duty imposed,

HAS ADOPTED THIS REGULATION :

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of telefax paper originating in Japan and falling within CN codes :

— ex 3703 10 00 (Taric code 3703 10 00 * 10),

— ex 3703 90 90 (Taric code 3703 90 90 * 10),

— ex 4809 90 00 (Taric code 4809 90 00 * 10),

— ex 4810 11 90 (Taric code 4810 11 90 * 10),

— ex 4811 90 10 (Taric code 4811 90 10 * 10),

— ex 4811 90 90 (Taric code 4811 90 90 * 10),

— ex 4823 59 10 (Taric code 4823 59 10 * 10),

— ex 4823 59 90 (Taric code 4823 59 90 * 10).

2. The amount of anti-dumping duty for the product specified in paragraph 1 shall be ECU 1 275,15 per tonne (net weight) (Taric additional code 8602), except when manufactured by the following companies for whom the amount of anti-dumping duty is set out below :

— Kanzaki Paper Manufacturing Co., Ltd. Tokyo (Taric additional code 8598) ECU 211,55 per tonne (net weight) (Taric additional code 8598) ;

— Mitsubishi Paper Mills Ltd, Tokyo (Taric additional code 8599) ECU 395,00 per tonne (net weight).

3. No anti-dumping duties shall apply to goods manufactured by Jujo Paper Co., Ltd, Tokyo (Taric additional code 8601) or Tomoegawa Paper Co., Ltd, Tokyo (Taric additional code 8600).

[1] See page 22 of this Official Journal.

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

*Article 2*

The amounts secured by way of the provisional anti-dumping duty imposed under Regulation (EEC) No 2805/91 shall be definitively collected to the extent of the amounts secured and to the extent of the amounts resulting from the application of the definitive duty as fixed in Article 1 (2).

Secured amounts in excess of these amounts will be released.

*Article 3*

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, 16 March 1992.

*For the Council*

*The President*

Jorge BRAGA DE MACEDO