COUNCIL REGULATION (EC) No 2199/94

of 9 September 1994

imposing a definitive anti-dumping duty on imports of certain magnetic disks (3,5" microdisks) originating in Hong Kong and the Republic of Korea, and collecting definitively the provisional duty imposed

THE COUNCIL OF THE EUROPEAN UNION,

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

Whereas :

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 534/94 [2], hereinafter referred to as 'the provisional Regulation', imposed a provisional anti-dumping duty on imports into the Community of certain magnetic disks (hereafter referred to as '3,5" microdisks') originating in Hong Kong and the Republic of Korea, and falling within CN code ex 8523 20 90. The duty was extended for a maximum period of two months by Council Regulation (EC) No 1340/94 [3].

B. SUBSEQUENT PROCEDURE

(2) Subsequent to the imposition of the provisional anti-dumping duty, the Government of Hong Kong and other interested parties who so requested were granted an opportunity to be heard by the Commission. Certain of these parties also presented written submissions making known their views on the findings. In particular, the Hong Kong authorities reiterated certain views expressed at various stages of the proceeding.

(3) One importer, which had not cooperated in the proceeding, made written representations to the Commission following the introduction of the provisional anti-dumping duty.

(4) Upon request, parties were informed 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 provisional duty. They were also granted a reasonable period within which to make representations subsequent to the disclosure.

(5) It should be noted that the complainant Community producer, RPS, Rhône-Poulenc Systems, mentioned in recital 4 (a) of the provisional Regulation should now be referred to as RPS Boeder International.

(6) Because of the volume and complexity of the data examined, the investigation could not be concluded within the time limit provided for in Article 7 (9) (a) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the basic Regulation').

(7) Following an anti-dumping proceeding on imports of certain magnetic disks (3,5" microdisks) originating in Japan, Taiwan and the People's Republic of China, hereinafter referred to as 'the prior proceeding', definitive anti-dumping duties were imposed in October 1993 by Council Regulation (EEC) No 2861/93 [4].

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(8) As no further arguments have been presented regarding the product under consideration and the like product, the findings set out in recitals 8 to 12 of the provisional Regulation are confirmed.

D. DUMPING

1. Normal value

(9) For the purpose of the definitive findings, normal value was, in general, established on the basis of the same methods as those used in the provisional determination of dumping, after taking into consideration new facts and arguments presented by the parties.

[1] OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).
[2] OJ No L 68, 11. 3. 1994, p. 5.
[3] OJ No L 146, 11. 6. 1994, p. 1.
[4] OJ No L 262, 21. 10. 1993, p. 4.

(10) Following publication of the provisional Regulation, two producers in Hong Kong and the Hong Kong authorities contended that, even although their domestic sales of the like product had been insufficient to permit a proper comparison, the amount for selling, general and administrative expenses used in constructing normal value should have been based on the selling, general and administrative expenses of the companies concerned, even those relating to export sales, rather than those of another producer in Hong Kong. The Hong Kong authorities also questioned the reasonableness of the level of profit used in constructing normal value.

It was not possible to follow the approach suggested for selling, general and administrative expenses, since Article 2 (3) (b) (ii) of the basic Regulation requires that these relate to domestic sales and not export sales.

The investigation showed that the selling, general and administrative expenses for the domestic producer referred to in the provisional duty Regulation related to sales in the same business sector. These were, therefore, used for the construction of normal value for the other Hong Kong producers.

As to the level of profit of 10 % used, it should be noted that this was the level alleged by the complainant, and was found to be less than that realized by the sole producer with sales of the product concerned on the Hong Kong market, albeit in unrepresentative quantities.

(11) The Korean producer argued that an adjustment should have been made to normal value for promotional items given to certain of its customers, on the grounds that the value of these goods represented a rebate, and should thus be deducted from the domestic price of the product concerned.

As the items in question were not 3,5″ microdisks, and there was no evidence that the price of the product concerned would have been different in the absence of the promotional goods, the costs incurred should be regarded as promotional expenses and not as rebates.

The adjustment claimed, therefore, is not allowable under the provisions of Article 2 (3) (a) of the basic Regulation.

(12) In the light of the foregoing, the findings set out in recitals 13 and 14 of the provisional Regulation are confirmed.

2. Export price

(13) One Hong Kong producer made its sales to the Community through its parent company in Japan.

At the provisional stage, in the absence of sufficient information on the price at which the parent company sold for export to the Community, the Commission considered that export price should be established on the basis of the price charged by the producer to its parent company.

Subsequent to the introduction of the provisional duty, the producer in question has provided evidence on the price at which its parent company sold for export to the Community.

The export price has been adjusted accordingly.

(14) No other new arguments were presented regarding the establishment of export price. The findings set out in recitals 15 and 16 of the provisional Regulation are, therefore, confirmed.

3. Comparison

(15) One Hong Kong producer argued that, as its export sales were mainly to OEM customers, these sales could not be compared to domestic sales made under a producer's brand name, because OEM sales would be at lower prices as a result of lower selling, general and administrative expenses and profit.

After examination of the domestic sales of the cooperating Hong Kong producers, the Commission has come to the conclusion that prices were not a function of the channel of sale. No pattern of prices specific to OEM sales could be identified and, therefore, the adjustment claimed could not be made.

4. Dumping margins

(16) On the basis of the modifications made to the calculations of normal value and export price, the definitive dumping margins calculated by the Commission, expressed as a percentage of the cif value, established in accordance with the provisions of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes [1], for each of the companies concerned, are as follows:

Hong Kong:

— Jackin Magnetic Company Ltd: 7,2,

— Plantron (HK) Ltd: 6,7,

— Technosource Industrial Ltd: 13,3.

[1] OJ No L 134, 31. 5. 1980, p. 1.

It should be noted that Swire Magnetic Holdings Limited ceased production and trading of 3,5" microdisks in the first quarter of 1994. It was therefore not found necessary to establish an individual dumping margin for this producer.

Republic of Korea:

— SKC: 8,1.

(17) As far as non-cooperating producers are concerned, the Hong Kong authorities contended that the dumping margin to be applied for Hong Kong should be based on the highest margin established for producers in Hong Kong which cooperated in the investigation.

The Commission has examined this contention and reaffirms its findings at recital 23 of the provisional Regulation that the low level of cooperation on the part of Hong Kong producers makes the adoption of such a solution unreasonable, as the dumping margin for such cooperating exporters is not a reliable basis for assessing the level of dumping on the very large volume of imports from non-cooperating exporters.

The Commission has, however, adjusted the dumping margin to be applied to non-cooperating producers in Hong Kong to the weighted average margin for the different product types sold for export to the Community, as alleged by the complainant.

The findings in this respect, and those set out in recital 22 of the provisional Regulation regarding non-cooperating producers in the Republic of Korea, are confirmed. The dumping margin for non-cooperating producers in the countries subject to this proceeding are thus set as follows:

— Hong Kong: 27,4 %,

— Republic of Korea: 8,1 %.

E. COMMUNITY INDUSTRY

(18) No new arguments were presented in relation to the definition of the Community industry. The findings set out in recitals 24 to 29 of the provisional Regulation are, therefore, confirmed.

F. INJURY

1. Cumulation of the effects of the dumped imports

(19) No new arguments having been received in connection with the findings at recitals 30 to 34 of the provisional Regulation, these findings are confirmed.

2. Community consumption, volume and market share of the dumped imports

(20) As no comments were received, the findings stated in recitals 35 and 36 of the provisional Regulation are confirmed.

3. Prices of dumped imports

(21) In the absence of comment, the findings in recital 37 of the provisional Regulation are confirmed.

4. Situation of the Community industry

(22) The Korean producer and the Hong Kong authorities questioned the view expressed by the Commission in recital 39 of the provisional Regulation, on the grounds that a 2,5 % increase in the market share of the Community industry between 1989 and the investigation period would lead to the conclusion that the Community industry had actually performed better than the market average.

It is correct that the sales volume of the Community industry increased in absolute terms and that its limited market share grew from 9,8 % in 1989 to 12,3 % in the investigation period. This, however, does not detract from the fact that the relative performance of the Community industry can only be properly assessed in the light of prevailing market circumstances. Ideally this would be a market free from the distortions, which was clearly not the case in the period examined. Dumped imports from the countries concerned in this and the prior proceeding prevented a relatively young industry from achieving a market share of a size it could reasonably have attained at a time of rapid growth in consumption.

The findings in recitals 38, 39 and 42 of the provisional Regulation are, therefore, confirmed.

G. CAUSATION

(23) No new arguments were presented as to causation of injury. The findings of recitals 44 to 50 of the provisional Regulation are, therefore, confirmed.

H. COMMUNITY INTEREST

(24) No new arguments have been received in respect of Community interest.

However, as regards the interests of users and despite the fact that no representations have been made at any time during the proceeding by final consumers of 3,5" microdisks, the Commission has sought to determine with some degree of precision from the information available to it whether the imposition of anti-dumping duties would have an impact on users that would go beyond the restoration of fair, undistorted trading.

In view of the total lack of input from user interests in this proceeding, the following remarks draw on general sources of information on developments in the Community and world markets for 3,5" microdisks.

On a global level, overall demand continues to increase, although, in line with the growing length of time between the release of new packages (one major release now takes place approximately every three years), slower growth in the software duplication sector is exerting a negative influence on the rate of increase. Demand could also be expected to decline as alternative data storage systems develop.

On the supply side, excess production capacity continues to exist on a world level. This has resulted in continuing price declines in 1993 and in the early months of 1994.

The Community market is, of course, not immune to the imbalance between global demand and supply. Prices in the Community have continued to decline, and given the competition that exists on both the world sand Community markets, there are no grounds for believing that user interests will be adversely affected by the imposition of definitive anti-dumping duties in the present proceeding.

A further factor which would relieve any unjustified upward pressure on prices to users that resulted from definitive duties is that the Community will continue to rely on imports as, despite recent increases in production capacity by the Community industry, total existing capacity in the Community is able to meet only about 70 % of Community demand.

The conclusion to be drawn, therefore, is that users of 3,5" microdisks in the Community are unlikely to experience any significant negative consequences as a result of the introduction of definitive anti-dumping duties, in particular no unjustified price increases.

In the light of the foregoing, the findings set out in recitals 51 to 56 of the provisional Regulation are confirmed.

I. DUTY

(25) No comments were received on the methodology adopted by the Commission for the establishment of the duty rates to be applied, as set out in recitals 57 to 60 of the provisional Regulation.

These are therefore confirmed, and as the injury thresholds established exceed the dumping margins definitely determined, measures should be imposed at the levels of these dumping margins.

J. COLLECTION OF THE PROVISIONAL DUTIES

(26) In view of the dumping margins established, the injury caused to the Community industry, and of the latter's precarious financial situation, it is considered necessary that amounts secured by way of provisional anti-dumping duty for all companies should be collected definitively. Where the provisional duty exceeds the duty rate definitively imposed, the amount collected should not exceed that of the definitive anti-dumping duty,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of 3,5" microdisks used to record and store encoded digital computer information, falling within CN code ex 8523 20 90 (Taric code 8523 20 90* 10), and originating in Hong Kong and the Republic of Korea.

2. The rate of duty applicable to the net, free-at-Community-frontier price, not cleared through customs, shall be as follows :

(a) 27,4 % in respect of the products specified in paragraph 1 originating in Hong Kong (Taric additional code : 8772), with the exception of imports which are manufactured by the following companies, which shall be subject to the rates of duty mentioned hereunder :

— Jackin Magnetic Co. Ltd : 7,2 % (Taric additional code : 8775),

— Plantron (HK) Ltd : 6,7 % (Taric additional code : 8776),

— Technosource Industrial Ltd : 13,3 % (Taric additional code : 8778) ;

(b) 8,1 % in respect of the products specified in paragraph 1 originating in the Republic of Korea.

3. The provisions in force concerning customs duty shall apply to the said duty.

Article 2

1. The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 534/94 in respect of 3,5" microdisks shall be definitively collected. Where the provisional duty exceeds the duty definitively imposed, the amount collected should not exceed that of the definitive duty.

2. Amounts secured in excess of the definitive rate of duty shall be released.

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, 9 September 1994.

For the Council

The President

Th. WAIGEL