COUNCIL REGULATION (EC) No 1006/95

of 3 May 1995

amending Regulation (EEC) No 3433/91 in so far as it imposes a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China

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 14 thereof,

Having regard to the proposal submitted by the Commission after consultations within the Advisory Committee,

Whereas :

A. PREVIOUS INVESTIGATIONS

(1) By Regulation (EEC) No 3433/91 [2], the Council imposed a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters falling within CN code ex 9613 10 00 and originating, *inter alia,* in the People's Republic of China. The rate applicable to products originating in that country was set at 16,9 %.

(2) By a notice published in March 1992 [3] the Commission initiated a review of Regulation (EEC) No 3433/91 in so far as it concerned certain Chinese companies which alleged, in particular, that they did not export the product concerned during the period covered by the original investigation (a so-called newcomer review). By Decision 93/377/EEC [4], the Commission terminated the above review investigation without any changes to the measures in force.

B. CURRENT REVIEW INVESTIGATION

(3) In November 1993, the Commission received a request for a review of the above Regulation in so far as it concerns imports originating in the People's Republic of China. The request was lodged by the European Federation of Lighter Manufacturers, acting on behalf of Community producers together representing a major proportion of the Community production of the product in question. The request alleged changed circumstances since the conclusion of the original investigation in that there had been an increase in the dumping margin for exports to the Community from the People's Republic of China and, consequently, further injury. It was considered that the review request contained sufficient evidence to justify the opening of an investigation.

(4) In December 1993 the Commission announced by a notice [5] the initiation of a review of Regulation (EEC) No 3433/91 in respect of imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China, in accordance with Article 14 of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the Basic Regulation').

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

(6) One importer, two exporters and one producer of the People's Republic of China made their views known in writing. Four Community producers, Bic SA, Swedish Match SA, Tokai Seiki GmbH and Flamagas SA also submitted their views in writing. Several of the abovementioned companies requested and were granted hearings.

(7) The Commission sought and verified all the information it deemed necessary for the purpose of its investigation and carried out investigations at the premises of the following companies :

Community producers (factories and/or sales offices) :

— Bic Deutschland GmbH, Ettlingen, Germany

— Bic SA, Clichy, France

— Bic SA, Redon, France

— Biro Bic Ltd, London, United Kingdom

— Bryant & May, High Wycombe, United Kingdom

[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 326, 28. 11. 1991, p. 1.
[3] OJ No C 62, 11. 3. 1992, p. 2.
[4] OJ No L 158, 30. 6. 1993, p. 43.
[5] OJ No C 343, 21. 12. 1993, p. 10.

— Flamagas SA, Barcelona, Spain
— Laforest Bic SA, Tarragona, Spain
— Swedish Match, Visselhövede, Germany
— Swedish Match SA, Rillieux-la-Pape, France
— Tokai Seiki GmbH, Mönchengladbach, Germany
— Tokai Vesta Hispania SA, Alcalá de Henares, Spain

Exporters:

— Capital Line Industries Ltd, Hong Kong
— Gladstrong Investments Ltd, Hong Kong

Unrelated importer:

— Tröber GmbH, Hamburg, Germany.

(8) The Commission also sought information from producers in the Philippines which was used as the analogue country for the establishment of normal value (see recitals 19 to 27). Detailed and complete information was provided by and verified at Swedish Match Philippines Inc., Manila, Philippines.

(9) The exporters and the sole importer which cooperated, requested and were informed of the essential facts and considerations on the basis of which it was intended to recommend the amendment of the definitive anti-dumping duty in force on imports of the product concerned originating in the People's Republic of China. The Commission took into account, where appropriate, the submissions of the parties concerned.

(10) The investigation of dumping covered the period 1 January to 30 September 1993 (hereinafter referred to as the 'investigation period').

C. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT AND COMMUNITY INDUSTRY

(i) *Product under consideration*

(11) The product subject to the definitive anti-dumping duty referred to in recital 1 is gas-fuelled, non-refillable pocket flint lighters (hereinafter referred to as 'disposable flint lighters').

It should be recalled in this respect that there are other disposable lighters on the market (piezo lighters) the technical characteristics of which are quite different to the abovementioned product. Therefore they were not considered to be identical to the product concerned in the original investigation, were not covered by the original investigation and were excluded from the scope of the measures.

(12) The importer which cooperated claimed that, in addition to the already existing separation between flint and piezo disposable lighters, a new distinction should be made amongst disposable flint lighters, between plastic body and nylon body lighters. This importer claimed that two markets for disposable flint lighters existed, one offering luxury nylon-based lighters and the other so-called standard plastic body lighters. Alleging that all Chinese disposable flint lighters had a plastic body, this importer requested that the product under consideration be restricted to such products.

(13) In the course of the investigation carried out by the Commission, it was found that such a narrow definition of the product under consideration would not be justified, notably because the alleged divisibility of the disposable flint lighters market into segments, which is based on differences in physical characteristics and consumers' perception of the product, is not confirmed by facts.

The product in question is indeed manufactured in different sizes and models and different materials may be used in the composition of the lighter body. However, all these disposable flint lighters have the same basic technical characteristics, the same basic application and perform the same function. In contrast to this, it has to be noted that the distinction between flint and piezo disposable lighters was based on differences in technical characteristics which are clearly established.

In addition, it is also clear that the difference between flint and piezo lighters is perceptible to consumers, while the difference between disposable flint lighters with a body made of either plastic or nylon, is not. Indeed, the product concerned is a disposable one and the statement that consumers would be aware of the abovementioned difference is not evidenced, among other things, by the existence of clearly separate channels of sales. On the contrary, all disposable flint lighters are sold without distinction in the same kind of shops to customers having the same expectations and nothing is done to make consumers aware of the alleged differences between plastic body and nylon body lighters. In particular, it should be noted that plastic body and nylon body lighters are not easily distinguishable since they are both available in translucent and opaque forms.

(14) Therefore, the whole range of models of disposable flint lighters is to be considered as forming one single category of product, irrespective of the material used to manufacture the body, which represents, in any case, only a minor difference in physical characteristics, as well as in cost terms (see recital 36).

The findings of the original investigation in respect of the product under consideration, as recalled in recital 11, are therefore confirmed.

(ii) *Like product*

(15) The importer which cooperated claimed that the findings of the original investigation in respect of the like product definition should be considered, in order to take account of the fact that a Community producer, newly involved in the proceeding, was manufacturing plastic body lighters, allegedly 'identical' to those imported from the People's Republic of China, while other Community producers, as well as the cooperating producer in the analogue country, were producing nylon body lighters which should be considered according to this importer as, at most, 'similar' to Chinese lighters.

It should be stressed again in this respect that a minor physical difference, such as the material used for the manufacture of the lighter body, which has no impact on the basic technical characteristics, basic application and function of the product and which is not perceptible to consumers, is insufficient to justify a distinction being made between allegedly 'identical' and 'similar' disposable flint lighters. This conclusion applies to the comparison of disposable flint lighters imported from the People's Republic of China with, respectively, all those produced and sold in the Community and those produced and sold by the cooperating producer in the analogue country.

(16) The same importer also made representations regarding various physical differences said to have an impact on the like product definition. However, these allegations, in general already addressed during the original investigation, were not supported by decisive new evidence that would justify their being taken into account in the like product definition, notably as regards the consumers' perception of the product.

(17) In these circumstances, it is confirmed that the disposable flint lighters produced and sold by the Community industry and those imported from the People's Republic of China possess sufficiently similar basic physical and technical characteristics for them to be considered a like product. While there may be some minor differences between the imported product from the People's Republic of China and the Community production, these differences are not such as to warrant a finding that they should not be regarded as like products. The findings of the original investigation in respect of the like product definition are therefore confirmed.

As explained under recitals 26 and 36, the above conclusion is equally valid for the disposable flint lighters produced and sold by the cooperating producer in the analogue country.

(iii) *Community industry*

(18) In the light of the above, the claim that the Community industry should be redefined as comprising only the Community producer manufacturing plastic body lighters was rejected. On this basis, it was found that during the investigation period, the Community producers on behalf of which the request for a review was lodged, represented more than 70 % of total Community production of the like product. Accordingly, it is concluded that the producers in question constitute the 'Community industry' within the meaning of Article 4 (5) of the Basic Regulation.

D. DUMPING

(a) Normal value

(i) *Analogue country*

(19) Since the People's Republic of China is not a market economy country, normal value had to be determined on the basis of information obtained in a market economy country (so-called analogue country) in accordance with Article 2 (5) of the Basic Regulation. For this purpose, the complaint suggested that Thailand be used as the analogue country as in the original investigation and contact was made with the two Thai producers that had cooperated with the said investigation. On this occasion, the Thai producers did not cooperate.

(20) Thus, contact was also made for this purpose with one Korean producer and two producers in the Philippines. Only the producers in the Philippines indicated that they were willing to cooperate with the Commission and submitted replies to the Commission's questionnaire. However, in the case of one producer in the Philippines, the reply was too limited and more details were requested. Subsequently, the producer concerned informed the Commission that it was not willing to supply more detailed information. Consequently, this producer was considered as uncooperative, with the result that only one company remained as a possible source of information concerning the Philippines.

Following disclosure of the essential findings of the investigation, the importer which cooperated claimed that a Hong Kong Company, Cli-Claque Ltd, allegedly manufacturing flint disposable lighters in the Philippines, should also have been contacted. The existence of this alleged producer in the Philippines was only brought to the attention of the Commission at an extremely late stage of the investigation and could not, therefore, be considered without significantly impeding the investigation.

(21) Since no other possibility existed for determining normal value, a change in the analogue country could not, therefore, be avoided. In the light of the recent jurisprudence of the Court of Justice regarding the criteria applicable to the choice of analogue countries, the following were verified to assess the appropriateness of the Philippines for this purpose;

— representativeness of the market concerned:

the size of its domestic market makes the Philippines a representative country for the establishment of normal value for the People's Republic of China (total domestic sales of the cooperating producer in the Philippines amount to more than 5 % of Chinese exports to the Community);

— openness of the market:

the Filipino market is open to competition: the local production of disposable lighters is facing price competition mainly due to substantial imports. The structure of demand also favours competition since many operators, such as supermarkets and medium or small-sized retailers are present on the market;

— access to basic materials:

finally, it does not appear that significant differences exist between China and the Philippines regarding the ease of access to basic materials. It is true that some parts and components are imported in the Philippines but Chinese producers also import from suppliers located outside China some of the most sensitive parts of lighters, such as the flint. Overall, the availability of parts of lighters appears to be at least as good in the Philippines as it is in the People's Republic of China.

(22) However, given that the company which cooperated in the Philippines is part of a group of companies of which a complainant is also part, the Commission also considered it necessary to analyse the implications of the existence of such links, with a view to determining whether this situation had any distorting effect on the data submitted and, accordingly, whether this information could or could not be used in the framework of the current review investigation.

(23) An in-depth examination of the costs of production supplied by the Filipino producer concerned showed that due to the fact that certain parts used in the manufacture of disposable flint lighters were bought from related parties, additional costs were incurred. Therefore, for the purpose of making a reasonable and appropriate profitability test, the additional costs in question were deducted. After such adjustment, it was found that the prices practised by the cooperating Filipino producer for sales of the like product on the domestic market in the ordinary course of trade permitted the recovery of all costs incurred in the ordinary course of trade plus a normal profit margin.

In these circumstances, it was concluded that normal value could be based, in accordance with Article 2 (5) (a) (i) of the Basic Regulation, on the prices at which disposable flint lighters were actually sold for consumption on the domestic market in the Philippines.

(24) This, together with the abovementioned elements concerning the standing of the Philippines as analogue country, led the Commission to consider that the Philippines was an appropriate and not unreasonable choice. Interested parties were informed in due time of this proposed course of action. The main comments they have made in this respect are discussed below, as well as under recitals 28 to 31.

(25) The exporters concerned either agreed or did not react to the proposal to use the Philippines as the analogue country.

(26) Within the time limit granted for comments regarding the choice of the analogue country, the importer having cooperated indicated that the Philippines would only constitute an appropriate choice if the data used would concern a Filipino producer manufacturing plastic body lighters and having no links with the Community industry.

As concerns the alleged physical differences between plastic body and nylon body lighters, it has to be noted that the arguments put forward are identical to those raised in respect of the disposable flint lighters produced and sold by the Community industry in the context of the determination of the product under consideration and of the like product definition. As explained under recitals 12 to 17, the Commission considered that all disposable flint lighters form one single category of

product and that plastic body and nylon body disposable flint lighters have to be considered as like products. This conclusion is also valid in the context of the choice of the analogue country. With regard to the possible influence of existing links, the Commission considered that the examination set out in recital 23 had provided ample evidence that, provided that normal value is based on domestic selling prices, the concern expressed was without foundation.

This importer also suggested that Mexico be chosen as the analogue country. However, this proposal was made only in September 1994, i.e. more than five months after the deadline set for comments on the issue and could not, therefore, be considered without significantly impeding the investigation.

(27) The conclusion that the Philippines constitutes an appropriate and not unreasonable choice for the purpose of establishing normal value for the People's Republic of China in accordance with Article 2 (5) of the Basic Regulation is, therefore, confirmed.

(ii) *Claims for an application of Article 2 (6) of the Basic Regulation*

(28) Some interested parties claimed that normal value should have been established on the basis of Article 2 (6) of the Basic Regulation, i.e. in accordance with the provisions applicable when a product is not imported directly from the country of origin but exported to the Community from an intermediate country, and that, in this context, normal value should have been established in the exporting country, i.e. Hong Kong.

(29) It should be noted that only a limited number of Chinese exporters and one unrelated importer cooperated with the Commission. It so happens that the cooperating companies either exported to or imported into the Community the Chinese lighters via Hong Kong. These companies represent around 53 % of total exports to the European Community. As concerns the cooperating exporters located in Hong Kong, which represent around 13 % of total exports of Chinese lighters to the European Community, the Commission has established that they also sell Chinese lighters on their domestic market. However, for the other companies (i.e. non-cooperating exporters whose importers did not cooperate), the 'exporting route' was not known.

(30) In this context, the Commission is of the opinion that, as a general rule, the provisions of Article 2 (6) are not applicable to imports originating in a non-market economy country. However, in the present case, it is likely that the vast majority of Chinese disposable flint lighters were simply transhipped in Hong Kong. Concerning the existence of production in the country of export, it would appear, according to information made available to the Commission, that there was no production of finished disposable flint lighters in Hong Kong during the investigation period. Finally, as far as sales prices in the country of export are concerned, since the lighters concerned are either manufactured in China under sub-contracting agreements or the parties involved are related, the Commission cannot be satisfied that these sales were made in the ordinary course of trade.

(31) In view of the above, it is concluded that, even if Article 2 (6) were to be considered applicable to imports originating in a non-market economy country, it would not be appropriate in the context of the current investigation to establish normal value on the basis of the prices on the domestic market of the country of export, since there was no production of finished disposable flint lighters in Hong Kong and, additionally, no reliable comparable price would exist for these products in that territory. The normal value would thus have to be based on the prices on the domestic market of the country of origin. However, since the People's Republic of China is a non-market economy country, normal value must be established in accordance with Article 2 (5) of the Basic Regulation.

(iii) *Domestic sales price on the Filipino market*

(32) The Commission considered whether normal value could be established on the basis of the prices at which the product is actually sold for consumption on the Filipino market. In this respect, it was noted that the cooperating Filipino company sold its disposable flint lighters to several big customers, one of these customers being an independent distributor which resold the lighters to both retailers and wholesalers, another being a big tobacco company. The Commission also established that the sales prices allowed for a profit on sales (see recital 23).

It is therefore concluded that the domestic sales prices of the cooperating producer on the Filipino market constitute an appropriate basis for the establishment of normal value.

(b) **Export price**

(33) The Commission sent questionnaires to all exporters known from the two previous investigations concerning this product. Only the two exporters and one importer mentioned under recital 7, as well as one Chinese producer (namely Dong Guan Lighter Factory, Dong Guan City, People's Republic of China) submitted completed replies.

The total quantities reported by the cooperating exporters and the cooperating importer represent 53 % of the total imports. For the remaining exports and in accordance with Article 7 (7) (b) of the Basic Regulation, since Eurostat statistics contain price information based on a mix of different lighters (from the point of view of presentation, shape, size, etc.) and, therefore, not suitable for the purpose of establishing the export price and given the level of cooperation, the export price for the non-cooperating exporters was based on the average price of the cooperating company with the lowest average price. At the same time, it was assumed that the lighters delivered by non-cooperating exporters were 'naked' lighters sold in 50 unit packs (so-called 'bulk').

(34) The cooperating exporters requested individual treatment (i.e. the establishment of separate export prices and thus of individual dumping margins). Although individual treatment may be given to certain exporters in non-market economy countries, in particular where they have demonstrated their independence from the State in the conduct of their export policy and in the fixing of their export prices, it was considered that the utmost prudence was required in this matter.

In this respect, it has to be recalled that the newcomer review investigation referred to in recital 2 concluded that no individual treatment could be granted to any of the four Chinese companies involved in the said investigation. Since that conclusion concerned, among others, the two companies having cooperated in the current investigation and given that the companies in question did not submit any new substantiated evidence with regard to their claimed independence, the granting of individual treatment to the applicants was considered neither appropriate nor consistent with the Community Institutions' established approach.

(c) **Comparison**

(35) Although all disposable flint lighters can be considered as one single product, they are sold in different forms, i.e. naked, printed, sleeved, etc. The exports from China reported by cooperating companies consisted, by about 80 %, of naked lighters in 'bulk'. Only small quantities exported concerned one or two side printed disposable lighters. For the purposes of the dumping calculation, only the normal value and the export price of naked lighters in bulk packing were compared. This approach was considered reasonable since naked lighters in bulk constituted the great majority of the exported quantities as reported by cooperating companies.

(36) The importer having cooperated claimed that the lighters manufactured by the cooperating Filipino company were not comparable with the Chinese lighters because they were made out of different material, i.e. the body of the Filipino lighter is made of nylon and the body of the Chinese lighter of plastic. With regard to the other parts, the same importer also claimed that differences existed and should be taken into account in the form of a price adjustment of 100 %. This importer claimed that these physical differences resulted in a higher cost of production and thus have an impact on the selling price for the Filipino lighter when compared to the Chinese lighter.

As concerns the material used for the manufacture of the body, the information available to the Commission showed that the type of raw material used by Chinese producers is indeed less costly per kilogram than the one used by the Filipino producer. However, the technical characteristics of the plastic body lighter indicate that the walls of the body are up to 2,5 times thicker than the walls of the nylon body lighter, and therefore that more material is used. In addition, the processing cycle is longer in the case of the plastic body lighter due to the longer period required for cooling. On balance, the difference in cost is thus negligible.

The Commission accepts that the parts used by the Chinese and the Filipino producers are not absolutely identical and that consequently the assembly process is not strictly identical. However, on the basis of the information made available to the Commission, an allegedly more sophisticated part and/or a slightly different part was not systematically more costly to produce than the corresponding allegedly less sophisticated one. Furthermore, no information was available to suggest that the alleged physical differences, which only negligibly affect costs, have an impact on sales prices.

In these circumstances, it is concluded that no price adjustment is warranted to take account of alleged physical and/or qualitative differences.

(37) For the purpose of ensuring a fair comparison, an adjustment to normal value was granted in respect of the domestic sales tax on the Filipino market. As far as the export price is concerned and where available, the actual freight, insurance and other costs were deducted to arrive at fob level, otherwise a percentage corresponding to the latter deductions was taken. No further adjustment was claimed or considered necessary.

Domestic sales prices in the Philippines and Chinese export prices were compared at the same level of sales, i.e. fob national border.

(d) Dumping margin

(38) The dumping margin expressed as a percentage of the cif Community frontier value of the imports was found to be 80,3 %.

E. INJURY

(a) General remarks

(39) It should be stressed that the present review investigation was carried out further to a request from the Community industry alleging that dumping of Chinese disposable flint lighters had dramatically increased since the conclusion of the original investigation and claiming that the measures in force should be amended in order to remove further injury caused to the Community industry.

Taking into account the provisions of Article 13 (3) of the Basic Regulation, it was necessary to investigate the level of injury. In the original investigation, the injurious effects of Chinese dumped imports had been assessed and established cumulatively with imports from three other third countries. Accordingly, an injury investigation was also conducted with a view to establishing whether the increased dumping by the Chinese exporters had led to further injury which would warrant a modification of the measures in place in respect of the People's Republic of China.

(b) Total Community consumption

(40) In calculating total consumption of the product in question on the Community market, the Commission added Community producers' sales in the Community of disposable flint lighters to the total imports of these products into the Community, as declared falling within CN code 9613 10 00. On this basis, the total consumption has grown between 1989 (i.e. the investigation period of the original investigation) and 1993 by 15 %.

It is known, however, that the imports falling within CN code 9613 10 00 do not only cover disposable flint lighters but also disposable piezo lighters. The quantity of imported piezo lighters is not exactly known and, therefore, it is not possible to assess the consumption increase due to the imports of this type of disposable lighter. The Commission made an attempt to differentiate flint and piezo lighters in global import statistics on the basis of Taric statistics supposed to differentiate these two types of disposable lighters but no reliable historical data could be established on this basis.

Nevertheless, as far as the People's Republic of China is concerned, it should be noted that the information available to the Commission showed that no piezo lighters were imported from that country up to and during the current investigation period. This means, as far as the People's Republic of China is concerned, that no over-estimation of its market share for disposable flint lighters could occur since all imports from China falling within that CN code related to imports of the product under investigation.

(c) Factors relating to the dumped imports

(i) *Volume and market share*

(41) Between 1989 and the end of the investigation period, imports from China increased substantially when compared with 1989. Imported quantities were indeed 9,6 million units in 1989, then 69,3 in 1990, 78,1 in 1991, 45,5 in 1992 and 71,6 million units in 1993 (investigation period adjusted to 12 months).

After a relative decrease in 1992 due to the imposition of measures in 1991, the imports increased by a much higher rate than consumption. Consequently, the market share of Chinese imports increased substantially, i.e. from 1,5 % in 1989 to 11 % in 1991, then from 7 % in 1992 to 10 % in 1993 (investigation period adjusted to 12 months).

(ii) *Prices*

(42) In the context of this review investigation, it is extremely important to note that the export price of the Chinese lighters dropped by around 23 % in the current investigation period when compared to the original investigation period (1989). In this respect, it should also be noted that this trend was established on the basis of figures reported by the cooperating exporters and the cooperating importer since, for the reasons stated in recital 33, Eurostat statistics were not suitable for the purpose of establishing export prices.

(43) The prices of Chinese lighters were also compared with those of lighters produced in the Community and sold by the Community industry. As in the original investigation, the Commission considered that only those lighters with an equal or almost equal amount of gas, and therefore a similar quantity of ignitions, should be taken as a basis for this price comparison exercise, which was made on the basis of a representative percentage of sales, at the level of sales to wholesalers and large retailers. For the reasons stated in recital 36, which are also relevant in this context, no adjustment was applied to take account of other alleged physical and/or qualitative differences.

(44) The sales price of the imported Chinese disposable lighters was, during the investigation period, significantly below the average sales price of the comparable disposable lighters produced by the Community producers. The weighted average margin of price undercutting was found to amount to 26 % (expressed on the basis of the Community sales price).

(d) Situation of the Community industry

(i) *General*

(45) The lighter market is very price sensitive. In order to be able to sell or to keep market share, the numerous producers and buyers on the market tend to adjust their prices to the lowest level possible. Faced with low priced dumped imports from the People's Republic of China, the Community industry was forced to lower its prices in order to try to maintain market share, production level and capacity utilization.

(ii) *Production, sales and market share*

(46) Production and sales of the Community industry remained stable between the original investigation period and the current investigation period, despite a certain improvement noticeable in 1990 and 1991. However, over the same period, in a growing market, its market share decreased by 9 percentage points, while the market share held by Chinese imports grew by 8,5 percentage points.

(iii) *Prices, profitability and employment*

(47) Prices of the Community industry have, on average, dropped when comparing the original investigation period with the current investigation period. A decrease in price was indeed the only means to keep the loss of market share to a minimum. Despite this decrease, the Community industry did not achieve this result.

(48) Since the original investigation period the financial situation of the Community industry as a whole — after a certain improvement in 1991 — deteriorated up to the end of the current investigation period. The continued price fall could not be offset by reductions in costs. In 1993 the average sales price was below the average cost, including selling, general and administrative expenses.

(49) The Community industry has made considerable efforts to cope with the continuous decrease of prices, notably by reducing the number of its employees between the original investigation period and the current investigation period by 13 % but, at the same time, maintaining production and sales in order to remain viable.

(e) Conclusion on injury

(50) In these circumstances, it is concluded that the injury suffered by the Community industry has considerably worsened. In a growing market, the Community producers concerned have lost market share and their profitability has deteriorated in spite of severe cost reductions, including reduction of jobs.

F. CAUSATION OF INJURY

(51) The Commission examined whether the additional injury suffered by the Community industry was caused by the Chinese exporters' increased dumping and whether other factors may have caused or contributed to that injury.

(a) Effect to the dumped imports

(52) In examining the effects of the dumped imports, it was found that the increasing volume of the low priced dumped imports from the People's Republic of China coincided with the loss of market share, the price decreases and the deterioration in the financial situation of the Community industry.

(53) Indeed, between the original investigation period and the current investigation period the market share held by Chinese imports has considerably increased, namely from 1,5 % to 10 %, i.e. 8,5 % of total consumption, while the Community industry's market share decreased by 9 % of total Community consumption. During the same period, the level of undercutting by Chinese exports also increased from around 20 % before the imposition of the measures to 26 % in the current investigation period.

Given that the market in question is highly price sensitive, as already explained in recital 45, it is clear that this substantial and increasing price undercutting by Chinese dumped imports, with consequentially increased market share, has significantly affected the Community industry, both in respect of volumes sold by this industry on a market that was experiencing growth and on its selling prices, with the consequent impact on unit costs and profit.

Given, in addition, that the dumping margin of Chinese imports has substantially increased during the same period, it is concluded that such heavily dumped imports have caused further injury to the Community industry concerned.

(b) **Effect of other factors**

(54) The Commission examined whether factors other than the dumped imports had caused or contributed to the material injury suffered by the Community industry, such as falling exports to third countries by the Community industry or an increase of imports from countries other than the People's Republic of China.

(55) Between the original investigation period and 1993, exports to third countries by the Community industry showed an overall stable trend (in volume, index basis 1989 = 100, 1990 amounted to 106, 1991 to 105, 1992 to 95 and 1993 to 100). This evolution cannot therefore be considered as a factor having adversely affected the Community industry.

(56) Imports from countries other than the People's Republic of China showed between 1989 and the investigation period a stable market share at around 25 % of total consumption. A more detailed analysis showed that certain countries have taken over traditional suppliers now subject to anti-dumping measures (other than the Chinese) and may have entered the market due to an aggressive pricing policy, which may have had an impact on the situation of the Community industry.

This is confirmed by the recent lodging of a complaint and initiation of an anti-dumping proceeding concerning imports of disposable flint lighters originating in certain third countries which were not involved in the original proceeding (1). However, the hypothetical existence of dumped imports from other third countries does not detract from the fact that Chinese imports, having dramatically increased their market share by increased undercutting and dumping, should be considered, in isolation, as a cause of further material injury to the Community industry.

(57) One importer claimed that the introduction of new products such as the piezo disposable lighter and the flameless refillable lighter had adversely affected the Community industry by contracting demand and depressing prices for disposable flint lighters. However, these allegations were not supported by evidence indicating that purchases of these new products by Community consumers were replacing those of disposable flint lighters. In fact, it appears that the product concerned remained attractive, given the increased imports and consumption.

(58) The same importer also claimed that the economic recession was one of the main reasons for the injury suffered by the Community industry. As a result, consumers were allegedly looking for the lowest priced lighter available. Prices have therefore dropped, it was argued, and the Chinese lighters become more attractive to consumers.

While it is clear that Chinese dumped prices severely undercut the Community industry's prices and thus affrected its pricing policy and profitability, no substantiated evidence of the alleged impact of the economic recession on the Community lighter market as a whole, and on the Community industry's situation in particular, has been provided. Indeed, while such impact, if any, would also be noticeable on the overall Community market, it should be stressed that the consumption of disposable flint lighters in the Community has increased (see recital 40). In these circumstances, the argument that the economic recession would be responsible for the injury suffered by the Community industry cannot be accepted.

(59) The same importer claimed that the difficult situation of the Community industry also related to the fact that, compared with refillable lighters, the disposable flint lighters it was producing were environmentally unfriendly products and that the increasing environmental awareness of consumers in the Community made it more difficult to sell such disposable products, on which governments were moreover considering the imposition of so-called 'Eco taxes'.

In this context, it is worth noting that although imported lighters are equally environmentally unfriendly, they remain the subject of intense trading. The consumption of disposable lighters in general also continues to increase. In addition, the

(1) OJ No C 67, 18. 3. 1995, p. 3.

above argument based on the increasing environmental awareness of consumers was not supported by any clear evidence that a significant proportion of the Community consumers was now showing a marked preference for refillable lighters.

(60) Finally, this importer also claimed that any injury to the Community industry should be significantly diminished because the increase in imports from the People's Republic of China, noticeable in 1993, was due to developments on the Italian and UK markets, namely the abolition of excise taxes on disposable lighters which, until the end of 1992, were limiting the consumption of these products.

This argument cannot be accepted. Indeed, nothing explains why the abolition of excise taxes in the said Member States should result in an increase in imports which was significant with regard to products of Chinese origin only. In the absence of unfair trading practices, any competitive suppliers would have been able to enter, and compete on, the expanding Italian and UK markets. The fact that Chinese dumped imports gained a substantial share of the market in Italy and the United Kingdom underlines the specific impact of the Chinese dumped imports, which resulted in the Chinese achieving a larger market share by lower prices. These circumstances do not therefore warrant a modification to the findings regarding the causation of injury.

(c) Conclusion on causation

(61) In view of the above, it is evident that Chinese dumped imports have put a considerable downward pressure on disposable flint lighter prices in the Community market.

The effect of other factors, such as imports from other third countries, on the injury sustained by the Community industry cannot be totally set aside. However, given the various elements set out above and especially the significant increase in quantities imported at dumped prices from the People's Republic of China, combined with the greater level of price undercutting by Chinese exporters, it is concluded that the dumped imports from the People's Republic of China have, taken in isolation, caused further injury to the Community industry, and that this injury was material.

G. COMMUNITY INTEREST

(62) In the previous investigations, the adoption of measures was considered to be in the interest of the Community. Since no new arguments have been made which could lead to a reconsideration of this position, the findings of Regulation (EEC) No 3433/91 in this respect are confirmed.

H. DUTY

(a) Injury elimination level

(63) In the original investigation, for the purpose of establishing the injury elimination level, it was considered that any measure should allow the Community industry to cover its costs of production and to achieve a reasonable profit, namely 15 % on sales turnover. This profit margin was considered as the minimum necessary to finance new investments in manufacturing facilities and research and development. It was also considered that the comparison should be restricted to those models with an equal or almost equal amount of gas, and therefore a similar quantity of ignitions.

In the absence of any new substantiated argument in respect of the profit that the Community industry should be allowed to achieve, it was considered appropriate to follow the same approach in the current investigation as in the original investigation. For the reasons stated in recital 36, which are also relevant in this context, it was considered that alleged physical differences, other than the amount of gas, should not be taken into account for the purpose of determining comparable models.

On the above basis, the comparison showed that, in order to eliminate injury, Chinese cif prices would have to increase by 96,6 %.

(64) Since the injury elimination level is higher than the dumping margin, the duty should be based on the dumping margin found.

(b) Form of the duty

(65) Since prices of the Chinese imported disposable flint lighters steadily decreased after the imposition of the measures in 1991, it is highly foreseeable that an increased *ad valorem* duty would again lose its effectiveness within a relatively short time. Therefore, a simple amendment to the current *ad valorem* duty does not appear to be appropriate. The number of different types of lighters, i.e. naked, printed one side, printed two sides, one colour, multiple colours, etc., makes it virtually impossible to fix a minimum price level for disposable lighters.

It is therefore considered appropriate to amend the measure in force by imposing a specific duty per lighter (namely ECU 0,065 per piece). In this respect, it has to be noted that by applying such a duty which stays within the limits of the dumping margin, the additional value of special features will not be penalized. In other words, no duty will be

applied to the added value concerning printing or other special items which are at present very exceptional in the case of Chinese imports.

I. **PERIOD OF VALIDITY OF THE REGULATION**

(66) This Regulation should be considered as an amendment to Regulation (EEC) No 3433/91 within the meaning of Article 15 (1) of Regulation (EEC) No 2423/88 only in so far as the People's Republic of China is concerned. The measure imposed on imports from the People's Republic of China should, therefore, lapse after a period of five years starting from the date on which this Regulation enters into force, subject to the provisions of Regulation (EC) No 3283/94 (1),

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) No 3433/91 is hereby amended as follows :

1. the first phrase of Article 1 (2) shall be replaced by the following :

'2. The rate of the duty, applicable to the net, free-at-Community frontier price before duty, or the amount of duty per lighter, shall be set as follows :' ;

2. paragraph (b) of Article 1 (2) shall be replaced by the following :

'(b) ECU 0,065 per lighter for the products originating in the People's Republic of China ;'.

Article 2

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, 2 May 1995.

For the Council

The President

A. JUPPÉ

(1) OJ No L 349, 31. 12. 1994, p. 1.