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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 423/97

of 3 March 1997

amending Regulation (EEC) No 3433/91 in respect of imports originating in Thailand and imposing definitive anti-dumping duties on imports of gas-fuelled, non-refillable pocket flint lighters originating in Thailand, the Philippines and Mexico

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Articles 9, 11 and 23 thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(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 (hereinafter referred to as 'disposable flint lighters') originating, *inter alia*, in Thailand. The rate applicable to products originating in that country was set at 14,1 %, with the exception of the company Politop Co., Ltd ('Politop'), whose duty rate was 5,8 % and the company Thai Merry Co., Ltd ('Thai Merry'), which was exempted from the duty since it had offered an undertaking, accepted by Commission Decision 91/604/EEC [3].

(2) Further to the withdrawal of its undertaking by Thai Merry and the subsequent imposition of a provisional anti-dumping duty on its exports to the Community, the Council by Regulation (EC) No 398/94 [4], amended Regulation (EEC) No 3433/91 in order to remove the exemption from the duty originally granted to this company. Thai Merry's exports to the Community have since been subject to the definitive anti-dumping duty at the rate of 14,1 %.

2. Request for a review

(3) On 18 March 1995, the Commission announced, by a notice published in the *Official Journal of the European Communities* [5], the initiation of a review of Regulation (EEC) No 3433/91 in respect of imports of disposable flint lighters originating in Thailand and commenced an investigation pursuant to Article 11 (3) of Regulation (EC) No 3283/94 [6] which was replaced during the investigation by Regulation (EC) No 384/96, hereinafter referred to as 'the basic anti-dumping Regulation'. This interim review was initiated as a result of a request lodged in March 1994 by the European Federation of Lighter Manufacturers (EFLM), on behalf of its members representing almost the totality of Community production of the like product (namely the BIC Group, producer in France, Greece and Spain, the Swedish Match Group, producer in France and the Netherlands, Tokai Seiki GmbH, manufacturer in Germany and Flamagas, producer in Spain). This request, which alleged that the measure in force in respect of Thai imports was no longer sufficient to counteract the injurious dumping, contained sufficient evidence to justify the initiation of a review.

[1] OJ No L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ No L 317, 6. 12. 1996, p. 1).
[2] OJ No L 326, 28. 11. 1991, p. 1. Regulation as last amended by Regulation (EC) No 1006/95 (OJ No L 101, 4. 5. 1995, p. 38).
[3] OJ No L 326, 28. 11. 1991, p. 31.
[4] OJ No L 54, 25. 2. 1994, p. 1.
[5] OJ No C 67, 18. 3. 1995, p. 4.
[6] OJ No L 349, 31. 12. 1994, p. 1.

(4) Since the interim review in respect of imports originating in Thailand was likely not to be concluded before the end of the five-year period of application of the measures concerned (that is to say, on 30 November 1996), the interim review has also covered, in accordance with Article 11 (7) of the basic anti-dumping Regulation, the circumstances set out in Article 11 (2) of the said Regulation (i.e. the circumstances due to be examined in the context of an expiry review).

3. Complaints

(5) On 18 March 1995, the Commission announced, by a notice published in the *Official Journal of the European Communities* [1] the initiation of an anti-dumping proceeding concerning imports of disposable flint lighters originating in the Philippines and Mexico and commenced an investigation pursuant to Article 5 of the basic anti-dumping Regulation. This proceeding was initiated as a result of two complaints lodged in August 1994 in respect of imports of disposable flint lighters originating respectively in the Philippines and in Mexico.

The complaint concerning imports originating in the Philippines was lodged by the BIC Group, the Swedish Match Group and the Tokai Seiki GmbH, representing more than 90 % of total Community production of the like product. Immediately before initiation, the Spanish producer Flamagas became party to the complaint.

The complaint concerning imports originating in Mexico was lodged by the BIC Group and the Swedish Match Group only. The complaint remained, however, admissible, since the complaining producers represented a major proportion of total Community production of the like product. Immediately before initiation, the Spanish producer Flamagas also became party to this complaint.

It was considered that the relevant complaints contained sufficient evidence of dumping by the Filipino and Mexican imports and of material injury resulting therefrom to justify the initiation of anti-dumping proceedings. It was, however, considered appropriate that the relevant investigations be carried out in the framework of a single proceeding, given that both complaints, lodged almost at the same time, contained similar allegations concerning imports of the same product.

[1] OJ No C 67, 18. 3. 1995, p. 3.

4. Initiation of investigations

(6) The Commission officially advised the exporters and importers known to be concerned, the representatives of the exporting countries and the complainant Community producers of the initiation of the review and the initiation of the new proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing.

(7) A number of importers and producers in the countries concerned made their views known in writing. All parties who so requested were granted hearings.

(8) The investigation of dumping in respect of the three exporting countries concerned covered the period 1 April to 31 December 1994 (hereinafter referred to as 'the investigation period'). For the purpose of the dumping, injury and Community interest determinations, the geographical scope of the investigation was the Community as composed at the time of initiation, therefore including all 15 Member States.

(9) The Commission sent questionnaires to all parties known to be concerned and received detailed replies from the complainant Community producers, from two producers in Thailand, one producer in Mexico and its related exporter in the United States as well as from another related company which was selling the like product on the Mexican market, from three producers in the Philippines and a related company in Japan, and from four importers in the Community related to the producers in the exporting countries concerned and one independent importer in the Community.

(10) The Commission sought and verified all the information it considered necessary for a determination of dumping and injury and carried out investigations at the premises of the following firms:

(a) complainant Community producers:

Producing companies:

— BIC SA, Redon, France,

— Feudor SA (Swedish Match), Rillieux-la-Pape, France;

Producing companies and sales offices:

— Flamagas SA, Barcelona, Spain,

— Laforest BIC SA, Tarragona, Spain,

— Violex BIC SA, Athens, Greece;

Sales companies:

— BIC Deutschland GmbH, Ettlingen, Germany,

— BIC SA, Clichy, France,

— Biro BIC Limited, London, United Kingdom,

— Cricket SA (Swedish Match), Rillieux-la-Pape, France,

— Ebas Nederland (Poppell BV — Swedish Match), Eindhoven, Netherlands;

(b) producers/exporters:

From Thailand:

— Politop Co., Ltd, Bangkok, Thailand,

— Thai Merry Co., Ltd, Samutsakorn, Thailand;

From the Philippines:

— Iwax Philippine, Inc., Rosario, Cavite, Philippines (the investigation having also covered the related company Iwahori Philippines, Inc., Mariveles, Bataan, Philippines),

— Iwax Inc., Shizuoka, Japan (in respect of exports from its subsidiaries Iwax Philippine, Inc. and Iwahori Philippines, Inc.),

— Swedish Match Philippines, Inc., Manila, Philippines;

From Mexico:

— JMP Mexico, SA de CV, Tijuana, Mexico (in respect of its production of disposable flint lighters in Mexico),

— Tokai de Mexico, SA de CV, Cuernavaca, Mexico (in respect of its domestic sales of disposable flint lighters in Mexico),

— Scripto Tokai Corp., Fontana, USA (in respect of its exports to the Community of disposable flint lighters manufactured by JMP in Mexico);

(c) importers related to producers/exporters:

— Iwax (UK) Ltd, Ballymoney, United Kingdom; this importer became independent after the period of investigation,

— Poppell BV (Swedish Match), Eindhoven, Netherlands,

— Tokai Seiki GmbH, Mönchengladbach, Germany,

— Tokai Seiki BV, Hoofddorp, Netherlands;

(d) independent importers:

— Pollyflame International BV, Roelofarendsveen, Netherlands.

5. Subsequent procedure

(11) It has to be noted that a number of considerations (detailed in recitals 40 to 44) have led the Commission to the conclusion that a cumulative assessment of the effect of the dumped imports from both the country subject to a review (Thailand) and the two countries subject to a new proceeding (the Philippines and Mexico), was warranted.

As as result, from a procedural point of view, it was considered that definitive measures, if any, should be directly adopted in respect of all three countries concerned, without resorting to the intermediate step of provisional duties (an approach which also implied that the measures in force in respect of Thai imports would have to be simultaneously repealed).

(12) The Commission accordingly continued to seek and verify all information it deemed necessary for its definitive findings.

(13) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were also granted a period within which to make representations (and/or offer undertakings) subsequent to the disclosure.

(14) The parties either did not submit any written comments or submitted comments which did not justify any alteration of the preliminary conclusions. Within the specified time limit, three producers/exporters offered undertakings.

(15) The establishment of findings which, without resorting to the intermediate step of provisional duties, could be considered as final, made it necessary to provide all parties involved with preliminary and final disclosure and grant them sufficient time to submit their views. This, together with the setting up of appropriate undertakings, proved to be time-consuming and accordingly, the investigation overran the normal duration provided for in Articles 6 (9) and 11 (5) of the basic anti-dumping Regulation.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(16) The product subject to the definitive anti-dumping duty referred to in recital 1, as well as the product subject to the proceeding initiated in respect of imports originating in the Philippines and Mexico, is gas-fuelled, non-refillable pocket flint lighters. This product falls within CN code ex 9613 10 00.

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 from those of the abovementioned product. They were therefore not considered to be identical to the product concerned in the original investigation concerning Thailand, were not covered by the original investigation and were excluded from the scope of the measures. No reasons have emerged in the course of the current review and new proceeding which would justify a departure from this approach. Accordingly, piezo lighters were kept outside the scope of the current investigations.

In their representations made further to the final disclosure, the Thai authorities have argued that there are two distinct segments in the Community's disposable flint lighter market, the high end served by high quality Community produced lighters and the low end served by imports, including those from Thailand. This view, expressed in previous cases concerning disposable flint lighters, cannot be shared for the reasons already given in the past, which can be summarized as follows:

For the market of a product to be divided into segments requires at least that differences in physical characteristics be perceptible to, and actually perceived by, consumers and that clearly separate channels of sale exist. These conditions are not met in the case if disposable flint lighters, since all such products, which are globally perceived as being 'non-piezo and disposable' lighters are sold without distinction in the same kind of shops to customers having the same expectations (namely to buy a disposable product belonging to a single category of utility goods).

Finally, it has to be noted that although the product under consideration is manufactured in different sizes and models, all these disposable flint lighters have the same basic technical characteristics, the same basic application and perform the same function. Accordingly, as in previous investigations, the whole range of models of disposable flint lighters was considered as forming one single category of product.

2. Like product

(17) As regards the disposable flint lighters produced and sold domestically in the three countries concerned where such sales had taken place and information in their respect had been made available, the investigation showed that such products were either alike in all respects to, or closely resembling, those exported to the Community from the countries in question.

(18) The investigation also established that the disposable flint lighters produced by the Community industry and sold in the Community market and those imported from the three countries concerned possess similar basic physical and technical characteristics and are intended for the same use. While there may be some minor differences between the product imported from the countries concerned and the Community production, these differences (for instance in the presentation or the technique used for the assembly of the lighter) do not affect the substantial characteristics and properties of the product. The disposable flint lighters produced and sold by the Community industry and those imported from the three countries concerned should therefore be regarded as like products.

(19) Accordingly, it is concluded that disposable flint lighters produced and sold in the Community, as well as those produced and sold in Thailand, the Philippines and Mexico and those exported to the Community from these three countries should be regarded as 'like products', within the meaning of Article 1 (4) of the basic anti-dumping Regulation.

C. DUMPING

1. Normal value

(a) *Thailand*

(20) One Thai cooperating exporter, whose exports represented almost 100 % of total Community imports from Thailand during the investigation period, had sold disposable flint lighters on its domestic market. For two models, normal value was based on domestic selling prices, since after exclusion, in accordance with the provisions of Article 2 (4) of the basic anti-dumping Regulation, of non-profitable sales, the remaining profitable sales of

comparable models were found to represent at least 5 % of the sales volume of the models concerned to the Community. For a third model, in the absence of sufficient profitable sales of a comparable model, normal value was constructed on the basis of the company's costs of manufacture, selling, general and administrative expenses (hereinafter referred to as 'SG & A') and profit. These SG & A and profit were established on the basis of the abovementioned profitable sales.

(21) For the other Thai exporter, no dumping calculation could be made due to the fact that the company had ceased to export in 1992.

(b) *Mexico*

(22) The sole Mexican cooperating exporter, whose exports represented almost 100 % of total Community imports from Mexico during the investigation period, was fully export oriented but was nevertheless able to provide information regarding sales of the like product on its domestic market, as another company in the same group was producing and selling disposable flint lighters on the Mexican market. However, the sales in question, which were the only domestic sales of the like product available in Mexico, proved to be partly made at a loss, the remaining profitable sales representing less than 5 % of the quantities exported to the Community.

(23) Accordingly, the Commission constructed normal value for this exporter by adding to the cost of manufacture of each exported model, the domestic SG & A available in Mexico, i.e. those of its related company selling disposable flint lighters in Mexico. As regards profit, given the lack of representative profitable sales in Mexico for disposable flint lighters and the non-availability of reliable data in respect of sales of the same general category of products in this country, a reasonable alternative solution had to be sought.

(24) To this end, it was examined whether Thailand, for which representative and reliable data were available, could be considered as a comparable market to Mexico in the sector concerned and, thus, an appropriate reference for the profit determination. This examination led to the conclusion that the conditions prevailing on both markets were similar. Moreover, the exporter concerned acknowledges that the profit margin achieved in Thailand was not exceeding the one normally realized on the Mexican market in the same business sector. Therefore, for the purpose of constructing normal value for each model exported by the Mexican cooperating exporter, the profit margin established in Thailand was, in accordance with the provisions of Article 2 (6) (c) of the basic anti-dumping Regulation added to the abovementioned Mexican cost of manufacture and domestic SG & A.

(c) *Philippines*

(25) The comparison of import statistics, after exclusion, on the basis of available data, of certain lighters which are outside the scope of the investigation (see recital 16, considerations concerning piezo lighters) with quantities reported by the three Filipino cooperating exporters for the period of investigation, showed a level of cooperation close to 100 %.

(26) In the Philippines, two cooperating exporters (belonging to the same group) were solely export oriented. The third cooperating exporter was selling on its domestic market through a related selling company during the investigation period, but the latter, recently become independent, refused to cooperate. Therefore, no information regarding sales of the like product (or of the same general category of products) on the Filipino market could be collected and normal value had to be constructed on the basis of data available.

(27) To this end, it was examined whether Thailand, for which representative and reliable data were available, could be considered as a comparable market to the Philippines in the sector concerned and, thus, an appropriate reference for the SG & A and profit determination. This examination led to the conclusion that the conditions prevailing on both markets were similar. Moreover, the exporters concerned admitted that both the SG & A incurred and the profit margin achieved in Thailand were not exceeding those normally encountered on the Filipino market in the same business sector. Therefore, for the purpose of constructing normal value in the case of the three Filipino cooperating exporters, the Commission added to their respective cost of manufacture for each exported model, in accordance with the provisions of Article 2 (6) (c) of the basic anti-dumping Regulation, an amount for SG & A and for profit based on the respective amounts established in Thailand.

2. Export price

(28) Practically all export transactions made by the exporters concerned during the investigation period were considered (only a few models sold in very small quantities were disregarded in agreement with the representatives of the companies concerned).

(29) Where export sales were made directly to unrelated importers, export prices were established on the basis of the prices actually paid or payable for the product sold for export to the Community.

(30) Where exports were made to related companies which imported the product concerned into the Community, export prices were constructed on the basis of resale prices to the first independent buyer, adjusted to take account of all costs incurred between importation and resale including customs duties and a reasonable profit margin (namely 5 %). The latter was established on the basis of the profit margins considered reasonable in this business sector for unrelated importers.

Where cost allocations for importers' SG & A were necessary in the construction of export prices, these were generally made on the basis of turnover with the exception of those cases where the importers provided sufficient evidence to justify another method of allocation. These allocations included all the general administration and selling costs related to the sales under consideration, whether financed by the exporter or by the related importer. Discounts and rebates given in connection with sales of the related importer to independent buyers were taken into account in constructing export prices.

3. Comparison

(31) The weighted average normal value by model, as determined above, was compared at an ex-factory level with the export price, on a weighted average basis in the case of Thailand and on a transaction-by-transaction basis in the case of the Philippines and Mexico. Indeed, in the latter cases, the export price had to be constructed on the basis of resale prices to the first independent buyer. These resale prices and the corresponding constructed export prices showed patterns of pricing differing significantly among different purchasers, regions or time periods, which would have resulted in that the full degree of dumping being practised would not have been reflected had the method based on weighted-average export prices been used.

(32) As far as differences affecting price comparability are concerned, adjustments were granted in accordance with Article 2 (10) of the basic anti-dumping Regulation, where satisfactory evidence was therefore supplied. Such adjustments concerned differences in costs for level of trade (calculated on the basis of advertising costs, incurred on the domestic market but not on exports), transport, insurance, handling, packing and credit.

4. Dumping margins

(33) The examination of the facts showed the existence of dumping for all the cooperating exporters for which calculations could be made, the dumping margins being equal to the difference between normal value and export price duly adjusted.

(34) The weighted average dumping margins expressed as a percentage of the free at Community frontier price are as set out below:

Thailand:

Thai Merry: 51,9 %;

Mexico:

production by JMP Mexico and exports by Scripto Tokai Corp. USA: 27,1 %;

Philippines:

— production by Iwax Philippine Inc. and Iwahori Philippines Inc. and exports by Iwax Inc. Japan (single dumping margin): 52,6 %;

— Swedish Match Philippines, Inc. 36,7 %.

D. COMMUNITY INDUSTRY

(35) The investigation confirmed that the complainant Community producers, either represented by the EFLM (on whose behalf the request for an interim review in respect of Thai imports had been lodged) or acting separately in two distinct groups (one having lodged the complaint concerning imports originating in the Philippines and the other one the complaint concerning imports originating in Mexico), accounted in all cases for a major proportion of total Community production of the like product.

(36) During the course of the investigation carried out in respect of the above companies, it became apparent that two producers or groups of producers, namely Tokai Seiki GmbH, together with one of its sales subsidiary in the Community, and the companies belonging to the Swedish Match Group, were related respectively to the sole Mexican exporter and one Filipino exporter and were also importing the dumped product from the countries concerned.

In these circumstances, the Commission examined whether, in the light of the provisions of Article 4 (1) (a) of the basic anti-dumping Regulation, these companies should be excluded from 'the Community industry'. In this respect, it should be recalled that Article 4 (1) (a) does not provide for the automatic exclusion of producers who are related to exporters and/or themselves importing the dumped products, but rather obliges the Commission to examine on a case-by-case basis whether the exclusion of any producer in this situation is warranted.

(37) As far as Tokai Seiki GmbH is concerned, it has firstly to be noted that this company had made it clear that it only supported the action against the Philippines and Thailand and that its cooperation as a potential Community producer was restricted to the investigations in respect of these two countries. Secondly, the investigation showed that this producer was not only related to the sole Mexican exporter but also responsible for a very large proportion of the total imports into the Community of disposable flint lighters declared as originating in Mexico.

In this respect, it should be recalled that the investigations concerning Mexican and Filipino imports were carried out in the framework of a single proceeding (see recital 5) and that a cumulative assessment of the effect of the dumped imports from Thailand, the Philippines and Mexico was found to be warranted (see recitals 40 to 44). In this context, it was considered that taking into account the situation of Tokai Seiki GmbH in the overall injury assessment was not appropriate since, given the importance of the Mexican imports concerned, it would have led to unreliable results. Accordingly, it was considered appropriate to exclude Tokai Seiki GmbH from 'the Community industry'.

(38) As regards the companies belonging to the Swedish Match Group, which are related to the Filipino exporter Swedish Match Philippines, Inc., it appeared appropriate to determine whether those companies (which were complainants in all three cases and fully cooperated in all three investigations) were primarily producers with an additional activity based on imports and merely supplementing their Community production, or whether they were importers with relatively limited additional production in the Community.

The investigation revealed that the import activity of the companies belonging to the Swedish Match Group in respect of the product concerned originating in the Philippines was extremely limited, thus underlining that the core of their operations relating to the product concerned firmly remained in the Community. Accordingly, it was considered appropriate to maintain the companies concerned within 'the Community industry'.

(39) The injury findings set out below are therefore based on the information submitted by the cooperating companies other than Tokai Seiki GmbH, namely the producers belonging to the BIC Group and to the Swedish Match Group, and the Spanish company Flamagas.

E. INJURY

1. Cumulation

(40) The basic anti-dumping Regulation requires, as a precondition of cumulation, that the countries concerned be subject to simultaneous investigations, that the margin of dumping established in relation to the imports fom each country be more than *de minimis* (i.e. more than 2 %) and that the volume of imports from each country be not negligible. Where such conditions are met, the conditions of competition should then be examined, in particular to determine whether imported products originating in the countries concerned are interchangeable, are sold at similar price levels, have common or similar channels of distribution and are simultaneously present in the same geographical markets.

(41) In this respect, it has to be noted that the disposable flint lighters exported from all three countries concerned are subject to simultaneous investigations which have established dumping margins ranging from 27,1 to 52,6 %. In addition, none of the exporting countries concerned delivered to the Community quantities representing a market share beneath 1 %, which could then have been considered as negligible.

As regards their conditions of competition, the imported products originating in the three countries concerned were found to be interchangeable and sold at similar price levels, to have similar channels of distribution and to be simultaneously present in the same geographical markets.

In this context, the following arguments were raised by interested parties:

(42) The two related Filipino producers questioned the appropriateness of cumulation in the case of Filipino and Mexican imports on the grounds that differences in volume and progression of imports between these two countries would be such as to affect the above conclusion that Filipino and Mexican disposable flint lighters were competing under similar conditions on the Community market.

In support of this assertion, they claimed that the actual rate of increase of Filipino imports was not, by far, as sharp as that of Mexican imports and that the difference was such as to warrant a separate assessment of the impact of the imports concerned in the Community market. Information was provided showing that the actual progression of Filipino imports was less marked than the one reported by Eurostat. Reference was also made to a previous case (1) where the Commission had decided not to cumulate imports from Korea and China because the investigation had shown 'diametrically opposed progressions', in recital 42 of that Regulation, as regards import volume and market share as well as marked differences in these two countries' respective pricing policies.

However, while the progression of Filipino imports (corresponding to an increase in market share from 2 % in 1990 to 3,3 % in 1994) is less marked than that registered in the case of Mexican imports, of which the starting point was lower (the Mexican market share, 0,1 % in 1990 reached 9,2 % in 1994), it must be noted that both countries achieved a significant market share during the investigation period and exports were made at prices significantly undercutting those of the Community industry. In addition, it is worth noting that both Filipino and Mexican imports have increased in absolute terms as well as in market share and the levels of price undercutting practised were very similar.

It was therefore considered that the respective positions of Filipino and Mexican imports on the Community market were not sufficiently different so as to justify a finding that the conditions of competition between Filipino and Mexican lighters were different. Accordingly, the above claim could not be accepted.

(43) The representative of one of the Thai exporters also claimed that the injury caused by Thai imports should not be cumulatively assessed with the one attributable to Mexican/Filipino imports for the following reasons: Although Article 3 (4) of the basic anti-dumping Regulation allows cumulation in case of simultaneous investigations, cumulation of Thai imports, which are the subject of an interim review, with Mexican/Filipino imports would be inappropriate because the legal standards (and the consequent legal tests) which apply in such a review would be different from those applicable to a new proceeding.

As regards the appropriateness of a global assessment of the impact of imports already subject to measures together with imports which are investigated for the first time, it is considered that since the basic anti-dumping Regulation does not preclude such a methodology, in particular where a full scale injury investigation has been carried out, any decision in this respect should be made for each case on its own merits, i.e. by examining the impact of the respective behaviour of the exporting countries concerned.

In this respect, it should be noted that the anti-dumping measures applicable to Thai imports did not prevent this exporting country, after the withdrawal by the main Thai exporter of its undertaking in 1993, to resort again to injurious dumping, with the result that Thailand appears to have then adopted a very similar behaviour to that of the Philippines and Mexico.

This similarity of behaviour means that, notwithstanding the measures in force (likely to have, *ipso facto,* become insufficient to counteract the injurious dumping), imports from the country being reviewed may have contributed, on a par with imports from the countries subject to the new proceeding, to any injury which may prove to be attributable to the dumped imports under investigation.

(44) Therefore, it was considered that the similarity of behaviour of the three exporting countries concerned (with the consequent impossibility to assess separately their respective contribution to injury), together with the fact that the above criteria concerning conditions of competition are met, was such as to make cumulation warranted.

This approach was criticised by the Thai authorities on the grounds that it would lead to a confusion of the issue of whether to impose anti-dumping duties in the first instance (i.e. in respect of Filipino and

(1) Commission Regulation (EEC) No 763/90 of 26 March 1990 imposing a provisional anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China and terminating the anti-dumping proceeding concerning imports of those products from the Republic of Korea (OJ No L 83, 30. 3. 1990, p. 36).

Mexican imports) with the separate, allegedly higher standard of whether existing duties (applicable to Thai imports) should be continued (in an amended form, in the context of an interim review having also covered the circumstances due to be examined in an expiry review).

This view could not be accepted in particular because the argument of the Thai authorities that the standards of injury applicable to reviews of the present kind would be higher than the one applicable to new proceedings does not appear to be correct, notably in the light of the combined provisions of Articles 3 and 11 of the basic anti-dumping Regulation. Indeed, in the context of a review of the present kind, the Institutions have to take account of the fact that the existing measures may have limited the injurious effects of the dumped imports under examination. The latter may have either remained injurious or become such as to support a finding that the injury is likely to recur in the absence of measures.

On the basis of all the above considerations, the appropriateness of the cumulative assessment of the similar and simultaneous effect of the dumped imports from the three countries concerned was therefore confirmed.

2. Total Community-consumption

(45) In order to calculate total apparent consumption of the product in question on the Community market, Community producers' sales in the Community of disposable flint lighters were added to the total imports into the Community, as declared under CN code 9613 10 00 (excluding, however, as far as the Philippines are concerned, disposable piezo lighters, on the basis of reliable data made available during the investigation). On this basis, the total apparent consumption of disposable flint lighters has grown between 1990 and 1994 by 21 %.

(46) It is, however, known that this high rate of increase has to be qualified. Indeed, importers (which were anticipating an increased anti-dumping duty on Chinese disposable flint lighters) imported large quantities from the People's Republic of China at the end of 1994. Part of these quantities (around 65 million units), which could not be put on the market before 1995, were kept in stock and this situation artificially increased total apparent consumption in 1994.

Thus, in order to assess the actual rate of increase of Community consumption, the Commission has estimated that the share of Chinese imports cleared through customs in 1994 (amounting in total to 176,7 million units) likely to have been resold (by importers to wholesalers or retailers) in the same year amounted to ± 110 million units. On this basis, the increase in total consumption is 11 % (instead of 21 %). Such a rate of increase would appear to reflect fairly the actual trend of Community consumption.

3. Factors relating to the dumped imports

(a) *Imports' increase rate*

(47) The overall rate of increase of imports from the countries concerned was found to be very significant (more than + 280 %). Indeed, between 1990 and 1994, quantities:

— were multiplied by more than 120 in the case of Mexico (even though from an admittedly extremely low starting point),

— increased by more than 95 % in the case of the Philippines,

— increased by 18 % in the case of Thailand. In the context of a review, such an increase rate remains significant, as it appears likely that the imposition of anti-dumping measures in 1991 (and their amendment in 1994), has had an impact on the rate of increase of Thai imports, even if limited by the decrease in Thai selling prices following the withdrawal of its undertaking by the main Thai exporter.

(b) *Market share*

(48) Imports from the three countries concerned, considered together, have captured between 1990 and 1994 an additional 10 % of the Community market for the product in question (their share of the market indeed increased from 4,6 to 15 %). In the meantime, in a growing market, the Community producers have lost a substantial share of the market, namely more than 8,5 percentage points, from 57,3 % in 1990 to 48,6 % in 1994. This means that, globally, the position of other third countries has also been slightly eroded (a more detailed examination however showed, as explained at recital 70, that the People's Republic of China substantially increased its share of the Community market to the detriment of exporting countries other than those subject to the current investigations).

(c) *Prices of imports*

(49) For the model comparison, as in all previous investigations concerning disposable flint lighters, it was considered appropriate that only those lighters with an equal or almost equal amount of gas, and therefore a similar number of ignitions, be taken as a basis for the calculation of undercutting.

(50) Where sales were made to unrelated importers, the comparison was made between the cif import price, adjusted to duty paid, customer delivered level and the selling price in the EC of the Community producers at the same level of trade. Where sales were to a related importer, the price comparison was made on the basis of the sales to the first independent customer.

The average level of price undercutting, expressed as a percentage of the Community industry's average price, was found to be more than 30 % in all cases but one (namely the Filipino company related to the Swedish Match Group, whose exports to the Community, in extremely limited quantities, cannot be considered as representative of Filipino exports of disposable flint lighters). This means that prices of the disposable flint lighters imported from the countries concerned were significantly below the prices practised by the Community producers during the investigation period.

4. Situation of Community industry

(a) *General*

(51) 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 on offer. This means that faced with low priced dumped imports, the Community industry is either forced to lower its prices in order to try to maintain market share, production level and capacity utilization, or led to lose market share if it tries to maintain its prices.

(b) *Capacity, production and sales*

(52) Between 1990 and the investigation period, capacity remained stable while production very slightly increased. Sales slightly increased in volume and very slightly increased in value.

(c) *Market share*

(53) The Community industry's market share decreased from 57,3 % in 1990 to 48,6 % in the investigation period.

(d) *Prices*

(54) Prices, on average, slightly improved until 1992, then slightly decreased. It has to be noted in this respect that, in an attempt to keep its market share, the Community industry has, over the period examined, sold increasing quantities of products with special executions (such as 'sleeved' and 'printed' lighters, which would have normally justified price levels higher than those of 'standard' lighters). The investigation thus showed that such higher price levels, which would normally be associated with more sophisticated products, could not be maintained, with a consequent impact on the Community industry's profitability.

(e) *Profitability*

(55) The Community industry's average return on sales of the like product, negative in 1990, improved and became slightly positive in 1991. It deteriorated again, but remained positive, in 1992. In 1993, the average return was, again, negative. During the investigation period, the average sales price was slightly above the average cost of production.

(f) *Employment*

(56) In an effort to reduce its costs, the Community industry continued to reduce the number of its employees (an 8 % reduction between 1990 and 1993 was partly compensated for in 1994, but the number of employees remained, in 1994, 4 % below its level of 1990).

5. Conclusion on injury

(57) Prices of imports very substantially undercut the Community industry's average price, namely by more than 30 % (with the exception of the Filipino company related to a Community producer whose exports were too limited to be considered as representative of Filipino exports).

(58) Injury to the Community industry over the period under examination mainly took the following form:

— loss of market share: the Community producers have lost an 8,5 percentage point share between 1990 and 1994 (or even a 15 percentage point share if 1994 is compared with 1992). Given that, in terms of volume, their sales remained stable, this means that Community producers have been totally prevented from benefiting from the market expansion,

— insufficient profitability: the Community industry's overall profitability remained very low (particularly for an industry requiring substantial investments to innovate). This results from the fact that its prices, heavily undercut, could not be increased, even slightly, over the last five years (despite the fact that the share of the products with special executions, normally more expensive, increased). The Community producers' very low level of profitability reached in 1994, if allowed to continue, will not be sustainable. This creates a serious risk to see Community producers, in a relatively short time, relocating their production outside the Community.

(59) In summary, the Community industry, which appeared to be in the process of recovering from the effects of past dumping, is still in a very precarious financial and market situation and on this basis, it is concluded that it has been adversely affected and has suffered injury which is sufficient for it to be classified as material.

F. CAUSATION OF INJURY

(60) For the purpose of determining whether the injury suffered by the Community industry was caused by the Thai, Mexican and Filipino dumped imports and whether other factors caused or contributed to that injury, the following elements were examined.

1. Effect of the dumped imports

(61) In examining the effects of the dumped imports, it was found that the increasing volume and decreasing prices of the dumped imports coincided with the loss of market share and the deterioration in the financial situation of the Community industry.

(62) Indeed, between 1990 and the investigation period, the market share held by the dumped imports from the three countries concerned has significantly increased, namely from 4,6 to 15 %, i.e. by more than 10 % of total consumption, while the Community industry's market share decreased by more than 8,5 % of total Community consumption. In addition, during the investigation period, prices of the disposable flint lighters imported from Thailand, the Philippines and Mexico were significantly below the prices practised by the Community producers (on average by more than 30 %).

Given that the market in question is highly price sensitive, as already explained at recital 51, it is clear that this significant price undercutting by Thai, Filipino and Mexican dumped imports, with consequentially increased market share, has significantly affected the Community industry, even more so as the imported products were sold through the same sales channels and to the same customers as those of the Community industry.

2. Effect of other factors

(a) *Volume and prices of imports not sold at dumping prices*

(63) Imports from third countries other than those subject to anti-dumping measures or to the current investigations were found to have increased by 34 % between 1990 and 1994. However, this increase is not very significant in terms of market share (from 10 % in 1990 to 11,3 % in 1994).

(64) As to the price levels of these imports, it has to be stressed that Eurostat data, based on a mix of different lighters, cannot be considered as a suitable basis for the purpose of establishing accurate unit prices. In any case, no substantiated evidence which would show that the actual price levels of these imports were significantly undercutting the Community industry's prices was submitted by any interested party.

(b) *Evolution of demand and pattern of consumption*

(65) As can be seen from recitals 45 and 46, no contradiction in demand or any other negative changes in the patterns of consumption took place during the period under examination.

(c) *Trade practices of, and competition between, third countries and Community producers*

(66) No evidence concerning the existence of restrictive trade practices of third countries, which could have been a source of injury to the Community industry, has been submitted. As far as competition between other third countries and Community producers is concerned, no other case than that of Chinese imports, examined below, appeared to warrant special consideration.

(d) *Developments in technology, export performance and productivity of the Community industry*

(67) The ability of the Community industry to follow, or even get ahead of, its competitors as regards

technological developments is not in question (Community producers have indeed registered several valuable patents concerning the manufacture of disposable flint lighters).

(68) The Community industry's ability to compete on export markets outside the Community is also clearly established (Community producers' sales of disposable flint lighters to third countries rose by 14 % between 1990 and 1994).

(69) The same applies to the Community industry's productivity per worker, which has slightly improved between 1990 and 1994.

(e) *Impact of other imports sold at dumping prices*

(70) The case of the People's Republic of China was found to warrant special consideration in this context. This country indeed appeared to have substantially increased its share of the Community lighter market over the period 1990 to 1994. Quantities exported from the People's Republic of China to the Community were very substantial and prices not only dumped but also very low. By Council Regulation (EC) No 1006/95 [1], these imports were subjected to an increased anti-dumping duty.

All cooperating exporters have claimed that they were forced to follow the trend set by the Chinese in order to continue to sell. Although this argument is not totally unfounded, it is considered that the fact that the People's Republic of China has become one of the major players on the market (largely through dumping) cannot exempt other exporting countries, delivering quantities which are far from being negligible, from their responsibility for resorting to injurious dumping.

In addition, this does not detract from the fact that severe competition of low-priced dumped imports from Thailand, the Philippines and Mexico has significantly participated to the downward pressure put on disposable flint lighter prices in the Community.

3. Conclusion on causation

(71) Notwithstanding the fact that another element, namely the dumped imports from the People's Republic of China, may have had a negative impact on the Community industry, it is considered that dumped imports from Thailand, the Philippines and Mexico have by themselves caused material injury to the Community industry. This conclusion is based on the various elements set out above and especially the level of price undercutting and the quantities concerned which resulted in a significant downward price pressure.

G. CONTINUATION OR RECURRENCE OF DUMPING AND INJURY (THAILAND)

(72) Since, as explained in recital 4, the interim review in respect of imports originating in Thailand was likely not to be concluded before the end of the five-year period of application of the measures concerned, the interim review concerning this country has also covered the circumstances due to be examined in the context of an expiry review as set out in Article 11 (2) of the basic anti-dumping Regulation.

(73) In the course of this examination, carried out with a view to determining, in the assumption that the measures against Thailand would be due to expire, whether such expiry 'would be likely to lead to a continuation or recurrence of dumping and injury', the following elements were found to be relevant:

— since, already before any foreseeable expiry, the Thai imports concerned have continued to be dumped (moreover at a higher level than the one originally established), it is considered highly unlikely that the expiry of the measures could result in, or even coincide with, the disappearance of dumping,

— similarly, as regards the injury analysis, it should be noted that, had the conclusion on cumulation not been reached and therefore had Thai imports been examined in isolation, they would still have been found injurious to such an extent (given the results of the investigation as to the volume and prices of such imports) that an increase in the level of the applicable anti-dumping duty would have been warranted. This finding, made in consideration of the existence (and level) of the current measures, would be strengthened, if anything, in the light of their possible expiry.

(74) Accordingly, it is considered that, since the persistent injurious dumping is such as to make the amendment of the existing measures against Thailand warranted, it follows that the expiry of the measures would be likely to lead to a continuation of dumping and injury and that the measures against Thailand should not be allowed to lapse.

[1] OJ No L 101, 4. 5. 1995, p. 38.

H. COMMUNITY INTEREST

(75) In assessing whether it is in the Community's interest to take or modify anti-dumping measures in respect of imports of disposable flint lighters from the countries concerned which have been dumped and have caused injury to the Community industry concerned, the views of all parties involved in the proceeding were considered. This examination was carried out with a view to determining whether compelling reasons existed which would make anti-dumping measures unwarranted.

1. Community industry

(76) Unless measures are taken in respect of Mexican and Filipino imports and the current measures in respect of Thailand amended in such a way that causes the Mexican, Filipino and Thai lighter prices to increase significantly, it is considered that the Community industry will have to lower further its prices or will lose market share at an increased rate. In both situations, the financial situation of the Community industry will worsen. As a result, production in the Community will no longer be viable and might have to cease, resulting in loss of jobs in both the industry itself and related sectors.

Also, the revenues required for investment in research and development of products in line with lighter safety standard and more sophisticated production techniques, which are vital in maintaining competitiveness in a highly competitive sector, will be drastically reduced. Consequently, the Community industry could then, after a relatively short period of sustained losses, do nothing but withdraw from production in the Community.

It is therefore justified to give the disposable lighter industry, which has a long history of investment and resultant innovation in the Community, the chance to survive by removing the distortion effects of dumping and thus securing employment and future investment.

2. Consumer interest

(77) No information relating to the Community interest issue has been received from consumer organizations. The disposable lighter is an inexpensive product which, in general, is bought without special preference. Although differences in prices appear to have a determining effect on consumers' choice between different lighters, the absolute level of prices does not seem to have any influence on the decision to buy or not to buy such a disposable product. Therefore, a price increase, at the level of the importer and partly or wholly reflected throughout the distribution chain, will be likely to have no material impact on the total consumption of disposable flint lighters.

It should also be stressed that, given the usual mark up between the cif import price and the retail price, the lighter distribution chain is likely to be able to absorb most of the impact on the consumer of price increase which would result from anti-dumping measures. Additionally, it should be noted that price increases, if any, will not have a major impact on the budget of the consumer due to the low unit price of this item and the very limited amount spent on it per individual.

3. Conclusion

(78) Having examined the various interests involved, it is concluded that it is in the Community interest to impose anti-dumping measures to eliminate the injurious effects of the dumped imports under consideration and that, conversely, no compelling reasons exist which would make such measures unwarranted.

Indeed, failure to take action could mean disappearance of production in the Community and, consequently, loss of employment and lack of investment. The price increase and the consequent relatively little extra cost for the consumer can by no means be considered to be of the same magnitude as the cost of the total disappearance of a Community industry.

I. ANTI-DUMPING MEASURES

1. Injury elimination level

(79) In accordance with the relevant provisions of the basic anti-dumping Regulation, it was examined whether the measures should be less than the dumping margins found, if such lesser measures would be adequate to remove the injury to the Community industry. For that purpose, it was considered that the selling prices of each exporter to unrelated importers, adjusted to duty paid, customer delivered levels (or, where sales were to a related importer, the resale price to the first independent customer) should be compared to selling prices established at the same level of trade and reflecting the Community producers' cost of production together with a reasonable amount of profit.

(80) For that purpose, it was considered that only those lighters with an equal or almost equal amount of gas, and therefore a similar number of ignitions, should be taken into account. As to the amount of profit considered as reasonable, it was examined whether the amount of profit used in the previous proceedings concerning disposable flint lighters, namely a margin of 15 % on turnover, could be expected to be attained in the absence of the dumped imports concerned.

(81) In this respect, it has to be recalled that the dumped imports from the People's Republic of China may also have had a negative impact on the Community industry during the period under examination. Accordingly, in order to ensure that the remedy sought in respect of the dumped imports from the three countries concerned remains proportionate, it was considered appropriate and not unreasonable that the amount of profit used in the current injury elimination level calculations be limited to 10 %. This limitation of the profit margin to 10 % was considered appropriate in order to take account of the other factor of injury which may have affected the situation of the Community industry during the period currently under examination. It should not, therefore, be interpreted as entailing a global reconsideration of previous findings in respect of the lighter industry's reasonable profitability.

(82) The injury elimination level calculations carried out on the above basis resulted in the average underselling margins, expressed as a percentage of the free-at-Community-frontier price, to be higher than the corresponding dumping margins in the case of the Thai exporter Thai Merry, as well as in the case of the Mexican producer JMP (whose products are exported by Scripto Tokai Corp. USA).

For the Filipino cooperating producers, the average underselling margins, expressed as a percentage of the free-at-Community-frontier price, found to be lower than the corresponding dumping margins, were:

— production by Iwax Philippine Inc., and Iwahori Philippines Inc. and exports by Iwax Inc. Japan (single margin): 43 %,

— Swedish Match Philippines, Inc.: 17 %.

2. Case of the Thai company Politop

(83) As mentioned above, at the end of the original investigation concerning Thailand, the company Politop had an individual anti-dumping duty based on its dumping margin (namely 5,8 %) imposed.

On the occasion of the current review, this producer also cooperated but was unable to provide any data on the basis of which new dumping and injury margins could be calculated. Indeed, this producer only exported small quantities to the Community in 1992 and did not export to the Community any disposable flint lighters since then.

(84) From the documents examined (notably the company's commercial correspondence), it emerged that this situation came about as a result of Politop's refusal to sell at prices below cost. Arguing that its behaviour had been consistently fair over the past four years, Politop claimed that the increased residual duty likely to be established for Thailand should not apply to its exports to the Community and requested to be granted a 0 % duty rate, or at least that the current 5,8 % duty rate be maintained.

(85) In seeking an appropriate solution, it was found that since Politop entirely ceased to export to the Community, the best available information in its case could not be considered to be the residual dumping margin determined during the investigation period.

(86) In these circumstances, the best available information appeared to be Politop's own data from the previous investigation. It was therefore considered that the maintaining of Politop's current duty rate (5,8 %) should constitute the most appropriate solution to its very specific situation.

3. Undertakings

(87) Having been informed of the essential facts and considerations on the basis of which it was intended to recommend the repealing of the existing measures concerning Thai imports and the imposition of definitive anti-dumping duties in respect of imports originating in the three countries concerned, one Thai producer, the sole Mexican producer and the two related Filipino producers offered undertakings concerning their exports of the product concerned to the Community.

After examination of these offers, the Commission considered the undertakings as acceptable since they would eliminate the injurious effects of dumping pursuant to Article 8 (1) of the basic anti-dumping Regulation. Furthermore, given in particular the type of sales channels of the exports concerned (which are made either to related parties or sole importers in the Community), it was considered that these undertakings could be monitored effectively.

(88) The Commission consulted the Advisory Committee on the acceptance of these undertakings and no objections were raised. The undertakings offered were accepted by Commission Decision 97/167/EC (1).

4. Individual and residual duties

(89) Notwithstanding the acceptance of the undertakings offered by certain Thai, Mexican and Filipino producers:

— the measures in force in respect of Thailand should be repealed,

— individual duties should be imposed in respect of imports from the Thai company Politop (at the rate of 5,8 %, as explained in recitals 83 to 86) and the Filipino company Swedish Match Philippines, Inc., which did not offer any undertaking (at the level of the lesser margin mentioned in recital 82, namely 17 %),

— residual duties should be imposed on imports of the product concerned originating in Thailand, the Philippines and Mexico, in order to underpin the undertakings by avoiding their circumvention.

Given the level of cooperation obtained from the three countries concerned (close to 100 %), the residual definitive duties should be imposed, for each country, at the level established for the cooperating company with the highest dumping margin, (i.e. on the basis of the latter company's dumping margin or, where appropriate, underselling margin). On this basis, the residual duties should be set at 51,9 % in the case of Thailand, 43,0 % in the case of the Philippines and 27,1 % in the case of Mexico,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. at the end of Article 1 (1), 'and Thailand' is deleted;

2. paragraph (d) of Article 1 (2) shall be repealed.

Article 2

1. Definitive anti-dumping duties are hereby imposed on imports of gas-fuelled, non-refillable pocket flint lighters falling within CN code ex 9613 10 00 (Taric code 9613 10 00*10) originating in Thailand, the Philippines and Mexico.

2. The rate of the duties, applicable to the net, free-at-Community-frontier price, before duty, shall be as follows:

(a) 51,9 % for imports originating in Thailand (Taric additional code 8900) with the exception of imports which are produced and sold for export to the Community by Politop Co., Ltd, Bangkok where the rate shall be 5,8 % (Taric additional code 8937);

(b) 43,0 % for imports originating in the Philippines (Taric additional code 8900) with the exception of imports which are produced and sold for export to the Community by Swedish Match Philippines, Inc., Manila where the rate shall be 17,0 % (Taric additional code 8938);

(c) 27,1 % for imports originating in Mexico (Taric additional code 8900).

3. (a) The duties referred to in paragraph 2 (a) shall not apply to gas-fuelled, non-refillable pocket flint lighters produced and sold for export to the Community by Thai Merry Co., Ltd, Samutsakorn (Taric additional code 8542).

(b) The duties referred to in paragraph 2 (b) shall not apply to gas-fuelled, non refillable pocket flint lighters produced by Iwax Philippine, Inc., Rosario, Cavite, or Iwahori Philippines, Inc., Mariveles, Bataan and sold for export to the Community by themselves or by Iwax Inc., Shizuoka, Japan (Taric additional code 8939).

(c) The duties referred to in paragraph 2 (c) shall not apply to gas-fuelled, non refillable pocket flint lighters produced by JMP Mexico, SA de CV, Tijuana, and sold for export to the Community by Scripto Tokai Corp., Fontana, USA (Taric additional code 8940).

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 3

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

(1) See page 54 of this Official Journal.

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

Done at Brussels, 3 March 1997.

For the Council

The President

M. DE BOER