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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2380/98

of 3 November 1998

amending Regulation (EC) No 1567/97 imposing a definitive anti-dumping duty on imports of leather handbags 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 (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 Article 11(3) thereof,

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

Whereas:

I. PREVIOUS PROCEDURE

(1) By Regulation (EC) No 1567/97 [2] (hereafter 'the definitive Regulation'), the Council imposed a definitive anti-dumping duty on imports of leather handbags, falling within CN code 4202 21 00, originating in the People's Republic of China. The measures consist of an *ad valorem* anti-dumping duty of 38 % applicable to all exporters except for the companies Jane Shilton (Pacific) Ltd (0,0 %) and Picard International Ltd (7,7 %).

II. REVIEW

(2) On 13 September 1997, the Commission published a notice [3], inviting Chinese exporters of leather handbags to submit information in order to establish whether there was sufficient evidence warranting the initiation of an interim review of the definitive Regulation limited to the issue of individual treatment of exporters. On the basis of the information received following the publication of this notice, the Commission considered that there were sufficient grounds warranting, exceptionally, the initiation of an early interim review of the existing measures limited to the aspect of individual treatment.

(3) Consequently, by a notice published in the *Official Journal of the European Communities* [4] the Commission, after consulting the Advisory Committee and in accordance with Article 11(3) of Regulation (EC) No 384/96 (hereafter the 'basic Regulation'), initiated a review of the anti-dumping measures in force and commenced an investigation. The review was limited to the aspect of whether the cooperating exporters qualified for individual treatment in respect of their export price, in which case individual dumping and injury margins could be established for these exporters.

(4) The Commission officially advised the authorities of the exporting country. Furthermore, it gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(5) The Commission sent questionnaires to the parties known to be concerned and received detailed information from the following companies with respect to exports to the Community of leather handbags produced by themselves or by companies related to them in the People's Republic of China:

— The Well Leatherware Manufactory Limited, Hong Kong *,

— The IP Handbag Connections Limited, Hong Kong * (in respect of IP Handbag Industrial Ltd),

— Lucci Creation Limited, Hong Kong *,

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30. 4. 1998, p. 18).
[2] OJ L 208, 2. 8. 1997, p. 31.
[3] OJ C 278, 13. 9. 1997, p. 4.
[4] OJ C 378, 13. 12. 1997, p. 8.

— South Sea Leatherwares Limited, Hong Kong * (in respect of Shundi South Sea Leather Handbag Factory Ltd and Nam Chow Leather Products Co. Ltd),

— Colleen Handbags Manufacturer Limited, Hong Kong * (in respect of Shenzhen Colleen Handbag Co. Ltd),

— Crownwick Enterprises Limited, Hong Kong (in respect of Shenzhen Crownwick Leatherwares Co. Ltd),

— C-Duck Leather Goods Company Limited, the People's Republic of China,

— Lai Wah Industries Limited, Hong Kong *,

— W. K. Maxy Industries Limited, Hong Kong * (in respect of W. K. Maxy Industries Ltd and W. K. Maxy Leather Goods Industries Zhongshan Co. Ltd),

— Wideland Trading Company, Hong Kong *,

— Sitoy (H. K.) Handbag Fty. Limited, Hong Kong * (in respect of Dongguan Sitoy Leather Products Factory Ltd),

— Superior Leather Limited, Hong Kong (in respect of Ever Trust Leather Products Shenzhen Co. Ltd),

— C & S Company Limited, Kyongki-Do, South Korea (in respect of Kunshan C & S Leather Products Co. Ltd),

— Taiwan Yamani Inc., Taipei, Taiwan (in respect of Yamani Continental Inc.).

(6) The Commission sought and verified all information it deemed necessary for the purposes of its investigation and carried out on-the-spot verifications at the premises of the companies indicated above with an asterisk.

(7) In addition, the following importers, located in the Community, cooperated in the investigation and their replies were verified on the spot:

— Plastimoda SpA, Italy,

— Medici Grimm KG, Germany.

(8) Since the scope of the investigation was limited to the issue of individual treatment, and in order to enable the Commission to expedite its investigation, it was considered appropriate exceptionally to use for the review the same investigation period as that for the initial investigation, i.e. 1 April 1995 to 31 March 1996 (hereafter 'the investigation period') so as to compare export price and normal value within the same time period (as required by Article 2(10) of the basic Regulation).

III. PRODUCT UNDER CONSIDERATION

(9) The product under consideration is the same as that described in Article 1 of the definitive Regulation, i.e. 'handbags with outer surface of leather, of composition leather or patent leather, whether or not with a shoulder strap, including those without handle, designed primarily to contain small objects for personal use such as keys, purses, make-up and cigarettes, regardless of their size and form and currently classifiable under CN code 4202 21 00' (hereafter 'leather handbags').

In this respect, it should be clarified that so-called backpacks and shopping bags are considered to be 'handbags' and thus covered by the investigation (and by the measures imposed) if they fit the aforesaid description, regardless of the particular size and form these products may have. So-called beltbags, i.e. bags which are not designed to be carried by hand and/or on shoulders, are not covered by the investigation.

IV. DUMPING

1. Normal value

(10) Since the investigation is limited to individual treatment, i.e. an issue concerning the determination of an individual dumping margin on the basis of a comparison of the exporter's individual export prices with the normal value established in the analogue country, the normal value as established in the initial investigation in Indonesia — selected as analogue country in accordance with Article 2(7) of the basic Regulation has been retained.

This was considered appropriate, even more so as the investigation period of the review coincides with that of the initial investigation, i.e. the export prices and normal value compared were effectively established for the same time period, as required by Article 2(10) of the basic Regulation.

2. Export price

(a) *Individual treatment*

(11) All exporters cooperating in the investigation requested individual treatment pursuant to Article 9(5) of the basic Regulation.

Consequently, it was verified whether these companies sufficiently demonstrated that they enjoyed a degree of legal and factual independence from the authorities in the People's Republic of China, comparable to that which would prevail in a market economy country, so as to ensure that, if these companies were to be granted individual treatment, no genuine risk would ensue that

exports from companies subject to a higher anti-dumping duty rate would be channelled through them. To this end, the Commission addressed detailed questions to these companies regarding ownership, management and control of production and commercial policies.

(12) The companies having submitted questionnaire responses in the present investigation were incorporated in the Hong Kong Special Administrative Region (which is not part of the customs territory of the People's Republic of China) or outside the People's Republic of China but exported to the Community leather handbags manufactured at operations in the People's Republic of China controlled by them. These operations were either entities without a legal identity of their own, producing handbags on the basis of so-called 'processing with foreign materials' agreements, or legal entities in their own right under Chinese law, structured as so-called 'Sino-foreign cooperative joint ventures' or 'wholly-owned foreign enterprises'.

(13) It was found that some of the exporters were subject to a restriction in the People's Republic of China concerning the proportion of the output which may be sold on the Chinese domestic market. However, the above restriction, which appeared not to be strictly enforced by the Chinese authorities, had to be assessed in the concrete economic context within which each of these companies were operating in the People's Republic of China, in order to appraise whether the authorities in that country would have sufficient leverage to induce these companies into channelling exports of other Chinese manufacturers subject to a higher anti-dumping duty rate. This leverage hinges on the level of investment at risk in the People's Republic of China relative to turnover. The level of investment in turn mainly depends on the characteristics of the manufacturing process used for the products concerned.

In this respect, it should be pointed out that the manufacturing of leather handbags is a particularly labour-intensive and hardly automated industry. The value of the assets deployed at the manufacturing facilities in the People's Republic of China was found to be very small, particularly when compared with the turnover generated. The limited machinery used consists of light and relatively conventional equipment, such as sewing and stitching machines, which in many cases had moreover been fully depreciated.

In the light of these findings, it is considered that the authorities in the People's Republic of China would not have sufficient leverage to effectively influence the commercial behaviour of the exporters concerned, considering also that the costs and procedures involved to close down the manufacturing operations are very limited. Consequently, it was concluded that this constraint is not an obstacle to granting individual treatment since it does not create a genuine risk of circumvention via possible channelling (see recital 11).

(14) In the course of the present investigation an exporter came forward which cooperated in the initial investigation and which was granted individual treatment and a zero duty rate in the definitive Regulation, as it was found not to have dumped. The company informed the Commission about a change in the structure of its operations which took place after the investigation period and as a result of which the legal entity identified as the 'exporter' in the definitive Regulation was found to have changed. Upon submitting the appropriate evidence requested by the Commission, it was found that the new legal entity continues to satisfy all requirements for individual treatment and that therefore the zero duty rate has to be attributed to it. The operative part of the definitive Regulation will have to be amended so that the name of the new legal entity will now be mentioned.

(b) *Determination of the export price*

(15) In accordance with Article 2(8) of the basic Regulation, where exports were made to unrelated importers in the Community, the export prices were established on the basis of the prices actually paid or payable for export to the Community.

Where exports were made to a related importer in the Community or a compensatory arrangement existed between the importer and the exporter, the export price was established, in accordance with Article 2(9) of the basic Regulation, 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 5 % profit on turnover, i.e. the average profit of the unrelated importers that cooperated in the initial investigation.

3. **Comparison**

(16) In accordance with Article 2(10) and 2(11) of the basic Regulation, the weighted average normal value was compared with the weighted average export price at an FOB level. In order to make a fair comparison between normal value and export price, adjustments claimed made for differences in

physical characteristics, import charges, level of trade, transport, insurance, handling charges, packing costs, credit, discounts and warranty were granted, provided it could be demonstrated that they affected prices and price comparability.

(17) A number of exporters claimed, pursuant to Article 2(10)(a) of the basic Regulation, that an adjustment should be made to take into account differences in physical characteristics between the leather handbags produced in Indonesia, on the basis of which normal value was computed, and the exported leather handbags produced in the People's Republic of China, used to calculate export prices. Where it was found that the outer surface of leather handbags exported from the People's Republic of China to the Community was of a type of leather of a significantly lower quality (split or suede leather and patchwork leather) than that of the handbags used to establish normal value in Indonesia (genuine leather), the normal value was adjusted to reflect the impact of such difference on the market value of the leather handbags.

4. **Dumping margins**

(18) The dumping margins expressed as a percentage of the cif Community frontier value of the imports were found to be as follows with respect to the exporters eligible for individual treatment:

— C-Duck Leather Goods Company Ltd: 0,0 %

— Wideland Trading Company: 0,0 %

— Lucci Creation Ltd: 0,0 %

— Kunshan C & S Leather Products Co. Ltd: 0,0 %

— Yamani Continental Inc.: 0,0 %

— IP Handbag Industrial Ltd: 0,0 %

— W. K. Maxy Industries Ltd and W. K. Maxy Leather Goods Industries Zhongshan Co. Ltd: 0,0 %

— Lai Wah Industries Ltd: 3,1 %

— Shenzhen Colleen Handbag Co. Ltd: 4,2 %

— The Well Leatherware Manufactory Ltd: 6,5 %

— Shenzhen Crownwick Leatherwares Co. Ltd: 12,4 %

— Shundi South Sea Leather Handbag Factory Ltd and Nam Chow Leather Products Co. Ltd: 39,0 %

— Ever Trust Leather Products Shenzhen Co. Ltd: 45,2 %

— Dongguan Sitoy Leather Products Factory Ltd: 58,3 %

It should be noted that the names of some of the companies above differ from the ones listed in recital 5 in those instances where the manufacturing of the product concerned takes place at companies in the People's Republic of China which have their own legal identity according to Chinese law and which must therefore be considered to be the exporter for purposes of the present investigation.

V. AMENDMENT OF THE MEASURES BEING REVIEWED

(19) In accordance with the lesser-duty-rule as set out in Article 9(4) of the basic Regulation, it was also examined whether, for each company eligible for individual treatment, the amount of the duty based on the injury margin would be lower than the duty based on the dumping margin. The methodology used to calculate injury margins was the same as that in the initial investigation. In all cases the injury margins were found to be higher than the dumping margins and the duty rates should therefore be based on the dumping margins found.

It was submitted that the duty rates established in the present investigation should take retroactive effect as from the date of entry into force of Regulation (EC) No 1567/97. This argument could not be accepted in view of the prospective nature of measures adopted further to review investigations and, also, as this would result, for those exporters which receive as a result of the present investigation a lower duty rate than the residual duty, in an unwarranted bonus for their non-cooperation in the initial investigation.

(20) Given the relatively low volume of exports of the companies which should receive individual treatment, as compared with the total volume of exports from the People's Republic of China of the product concerned to the Community, it was concluded that a change of the country-wide duty rate specified in the definitive Regulation was unnecessary.

(21) The interested parties were informed of the facts and considerations on the basis of which it was intended to amend the definitive Regulation, and were given an opportunity to comment. Their comments were taken into account and, where appropriate, the findings were modified accordingly.

(22) Given the above, the Council concludes that the definitive Regulation should be amended.

(23) This review does not affect the date on which Regulation (EC) No 1567/97 will expire, pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(3) of Regulation (EC) No 1567/97 is hereby amended as follows:

1. The words 'Jane Shilton (Pacific) Ltd' shall be replaced by 'Zengcheng Jane Shilton Leather Goods Company Ltd'.
2. The following shall be added:

'— C-Duck Leather Goods Company Ltd: 0,0 % (Taric additional code: 8961),

— Wideland Trading Company: 0,0 % (Taric additional code: 8961),

— Lucci Creation Ltd: 0,0 % (Taric additional code: 8961),

— Kunshan C & S Leather Products Co. Ltd: 0,0 % (Taric additional code: 8961),

— Yamani Continental Inc.: 0,0 % (Taric additional code: 8961),

— IP Handbag Industrial Ltd: 0,0 % (Taric additional code: 8961),

— W. K. Maxy Industries Ltd and W. K. Maxy Leather Goods Industries Zhongshan Co. Ltd: 0,0 % (Taric additional code: 8961),

— Lai Wah Industries Ltd: 3,1 % (Taric additional code: 8310),

— Shenzhen Colleen Handbag Co. Ltd: 4,2 % (Taric additional code: 8311),

— The Well Leatherware Manufactory Ltd: 6,5 % (Taric additional code: 8451),

— Shenzhen Crownwick Leatherwares Co. Ltd: 12,4 % (Taric additional code: 8452),

— Shundi South Sea Leather Handbag Factory Ltd and Nam Chow Leather Products Co. Ltd: 39,0 % (Taric additional code: 8453),

— Ever Trust Leather Products Shenzhen Co. Ltd: 45,2 % (Taric additional code: 8454),

— Dongguan Sitoy Leather Products Factory Ltd: 58,3 % (Taric additional code: 8455).'

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, 3 November 1998.

For the Council

The President

B. PRAMMER