COMMISSION REGULATION (EC) No 971/98

of 7 May 1998

initiating an investigation concerning the alleged circumvention of the anti-dumping duty imposed by Regulation (EEC) No 3433/91 on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China by imports of the same lighters consigned from Hong Kong, Macao and Taiwan and by imports of certain disposable refillable pocket flint lighters originating in the People's Republic of China and making such imports subject to registration

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 905/98 [2], and in particular Articles 13 and 14 thereof,

After consulting the Advisory Committee,

Whereas:

(a) REQUEST

(1) The Commission has received a request pursuant to Article 13(3) of Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation') to investigate the alleged circumvention of the anti-dumping duty imposed by Council Regulation (EEC) No 3433/91 [3], as last amended by Regulation (EC) No 423/97 [4], on imports of gas-fuelled, non-refillable pocket flint lighters (hereinafter also 'disposable lighters') originating in the People's Republic of China. According to the request, the aforementioned anti-dumping duty is allegedly circumvented by:

(i) imports of disposable lighters originating in the People's Republic of China which have been transhipped via Hong Kong, Macao and Taiwan respectively;

(ii) imports of disposable lighters originating in the People's Republic of China which, after having been the subject of slight modifications, are declared as refillable and/or reflintable lighters although, in practical terms, they are not.

Furthermore, a request was made to make these imports subject to registration by the customs authorities pursuant to Article 14(5) of the Basic Regulation and where justified, to extend the above anti-dumping duty to them.

(b) APPLICANT

(2) The request was lodged by the European Lighters Manufacturers' Federation on 24 March 1998 on behalf of the following Community producers:

— Bic SA, Clichy Cedex, France,

— Flamagas SA, Barcelona, Spain,

— Tokai Seiki GmbH, Mönchengladbach, Germany.

According to the request, these companies are all manufacturers of disposable lighters and their collective output represents approximately 60 % of the total Community production of the like product.

(c) PRODUCT

(3) The product concerned in the original investigation and in the review investigation (hereinafter 'the previous investigation'), which resulted in an amendment of the anti-dumping duty in force by Council Regulation (EC) No 1006/95 [5], was gas-fuelled, non-refillable pocket flint lighters or disposable lighters. Disposable lighters are currently classifiable under CN code ex 9613 10 00. This CN code is given for information only.

As described in more detail below, the request to initiate the current investigation alleges, *inter alia*, that the existing measures are being circumvented by altering disposable lighters originating in the People's Republic of China and the only purpose of these alterations is to cause custom authorities to classify such imported lighters under a customs tariff heading different from that covering disposable lighters.

(d) REGISTRATION

(4) In view of the fact that circumvention is alleged to take place, *inter alia*, by imports of disposable lighters originating in the People's Republic of China which are declared as refillable and/or reflintable lighters although in practical terms, they

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 128, 30. 4. 1998, p. 18.
[3] OJ L 326, 28. 11. 1991, p. 1.
[4] OJ L 65, 6. 3. 1997, p. 1.
[5] OJ L 101, 4. 5. 1995, p. 38.

are not, registration of imports falling within CN code ex 9613 20 90 (refillable lighters) should be limited to lighters with an average free-at-Community-frontier, duty unpaid value per piece of less than ECU 0,5 (low-value lighters). This limitation of registration appears reasonable since it can be assumed that lighters with a price per piece of ECU 0,5 and more are non-disposable.

Registration should also cover imports into the Community of disposable lighters from Hong Kong, Macao and Taiwan.

The purpose of registration is to ensure that, should the anti-dumping duty applicable to imports of disposable lighters originating in the People's Republic of China be extended to imports of altered low-value lighters declared as non-disposable and originating in the People's Republic of China and/or to disposable lighters consigned from Hong Kong, Macao and Taiwan, it may be collected from the date of such registration.

(e) **EVIDENCE**

(5) The request contains sufficient *prima facie* evidence, in accordance with the requirements of Article 13 of the Basic Regulation, to indicate that the anti-dumping duty on imports of disposable lighters originating in the People's Republic of China is being circumvented.

(6) The evidence submitted is as follows:

A. *With regard to imports of disposable lighters allegedly originating in the People's Republic of China which have been transhipped via Hong Kong, Macao or Taiwan:*

(i) According to the request, there has been a change in the pattern of trade between third countries and the Community resulting from a practice for which there is insufficient due cause or economic justification other than the imposition of the anti-dumping duty.

The request contains evidence, based on Eurostat figures, that direct imports of disposable lighters originating in the People's Republic of China have decreased by more than 70 % between 1994 and 1997 (first nine months of 1997 extrapolated to an annual basis), i.e. after initiation of the previous investigation. These imports appear to have been partially replaced by imports of lighters from Hong Kong, Macao and Taiwan which have more than trebled over the same period.

Allegedly, these latter imports are of Chinese origin and are simply transhipped through Hong Kong, Macao and Taiwan respectively. This allegation is strengthened by the coincidence in time between the substantial decrease of imports directly from the People's Republic of China and the increase of imports, apparently, from three new origins.

(ii) Furthermore, the applicant provided evidence that the disposable lighters imported from Hong Kong, Macao and Taiwan respectively are sold at lower prices than those exported from the People's Republic of China to the Community during the investigation period concerning the previous investigation. Therefore, it is alleged that dumping is taking place at an even higher level than was found in the previous investigation and that the remedial effects of the anti-dumping duty are being undermined in terms of prices and quantities of the disposable lighters imported via Hong Kong, Macao and Taiwan respectively.

B. *With regard to alterations in the disposable lighters which causes them to be classified under a different customs tariff heading*

(i) The request contains evidence that part of the change in the pattern of trade results from the fact that imports of Chinese disposable lighters have been replaced to a large extent by lighters which have been modified in such a way that they appear to be classifiable under the Tariff heading for non-disposable lighters. Imports of so-called non-disposable lighters originating in the People's Republic of China have increased significantly (by more than 400 %) over the period 1994 to 1997 (first nine months of 1997 extrapolated to an annual basis).

The complaint alleges that, in fact, the disposable lighters have been simply altered by the addition of a valve, which should allow for the product to be refilled and, therefore, re-used. However, technical tests show that it is neither practical nor economically viable to refill and re-use these altered lighters. Finally, Community importers do not advertise such lighters as refillable to their buyers.

According to the request, under these circumstances, there is no economic justification for the process of adding a valve to the lighter. The only reason for altering the lighters would be the existence of an anti-dumping duty on imports of disposable lighters originating in the People's Republic of China.

(ii) Furthermore, the request contains evidence that the remedial effects of the anti-dumping duty are being undermined, in terms of prices and quantities, by imports of the so-called non-disposable lighters, i.e. altered as described above, originating in the People's Republic of China, and that there is dumping in relation to the normal value established in the previous investigation. Indeed, the applicant provided evidence that the so-called non-disposable lighters are sold to the Community at lower prices than the normal values established in the previous investigation. This is despite the addition of a valve which should normally increase production costs and prices.

(f) PROCEDURE

(7) In the light of the evidence contained in the request, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13(3) of the Basic Regulation, and to make imports of the lighters mentioned in recital 4 subject to registration in accordance with Article 14(5) of the said Regulation.

(i) Questionnaires

(8) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the exporters and the producer mentioned in the request, and the two exporters as well as the producer in the People's Republic of China who participated in the previous investigation. Information, as appropriate, may also be sought from Community producers and importers.

(9) Other interested parties which can show that they are likely to be affected by the outcome of the investigation, should request a questionnaire from the Commission within 15 days of the publication of this Regulation in the *Official Journal of the European Communities*. Any request for questionnaires must be made in writing to the address mentioned in Article 3(3), and should indicate the name, address, telephone and fax numbers of the requesting party.

The authorities of the Peoples's Republic of China, Hong Kong, Macao and Taiwan will be notified of the initiation of the investigation and provided with a copy of the questionnaire and the request.

(ii) Certificates of non-circumvention

(10) In accordance with Article 13(4) of the Basic Regulation, certificates, exempting the imports of the product concerned from registration or measures, may be issued by the customs authorities to importers when the importation does not constitute circumvention.

Since the issue of this certificate requires the prior authorisation of the Community institutions, requests for such authorisations should be addressed to the Commission as early as possible in the course of the investigation so that they may be considered on the basis of a thorough appraisal of their merits.

(g) TIME LIMIT

(11) In the interest of sound administration, a period should be fixed within which interested parties, provided they can show that they are likely to be affected by the results of the investigation, may make their views known in writing. A period should also be fixed within which interested parties may make a written request for a hearing and show that there are particular reasons why they should be heard.

(h) NON-COOPERATION

(12) Furthermore, it should be stated that, in cases in which any interested party refuses access to, or otherwise does not provide necessary information within the time limit, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the Basic Regulation, on the basis of the facts available,

HAS ADOPTED THIS REGULATION:

Article 1

An investigation, pursuant to Article 13 of Regulation (EC) No 384/96, is hereby initiated concerning imports into the Community of

(a) refillable pocket flint lighters falling within CN code ex 9613 20 90 originating in the People's Republic of China; and

(b) gas-fuelled, non-refillable pocket flint lighters falling within CN code ex 9613 10 00 consigned from Hong Kong, Macao and Taiwan.

Article 2

The customs authorities are hereby directed, pursuant to Articles 13(3) and 14(5) of Regulation (EC) No 384/96, to take the appropriate steps to register the imports into the Community of

(a) refillable pocket flint lighters with a free-at-Community-frontier, duty unpaid value per piece of less than ECU 0,5 falling within CN code ex 9613 20 90 (TARIC code 9613 20 90 10) and originating in the People's Republic of China; and

(b) gas-fuelled, non-refillable pocket flint lighters falling within CN code ex 9613 10 00 (TARIC code 9613 10 00 10) consigned from Hong Kong, Macao and Taiwan.

Registration shall expire nine months following the date of entry into force of this Regulation.

Imports shall not be subject to registration where they are accompanied by a customs certificate issued in accordance with Article 13(4) of Regulation (EC) No 384/96.

Article 3

1. All interested parties, if their representations are to be taken into account during the investigation, must make themselves known, present their views in writing, submit information and apply to be heard by the Commission within 40 days from the date of publication of this Regulation in the *Official Journal of the European Communities*. This time limit applies to all interested parties, including the parties not named in the request, and it is consequently in the interest of these parties to contact the Commission without delay.

2. Questionnaires should be requested from the Commission within 15 days of publication of this Regulation in the *Official Journal of the European Communities*.

3. Any information relating to the matter, any request for a hearing or for a questionnaire as well as any request for authorisation of certificates of non-circumvention should be sent to the following address:

European Commission,
Directorate-General for External Relations (Unit I-C-1),
DM 24 8/38
Rue de la Loi/Wetstraat 200,
B-1049 Brussels
Fax No: (32 2) 295 65 05.

Article 4

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, 7 May 1998.

For the Commission
Leon BRITTAN
Vice-President