COUNCIL REGULATION (EC) No 175/2000

of 24 January 2000

reimposing a definitive anti-dumping duty on imports of leather handbags originating in the People's Republic of China and sold for export to the Community by certain exporting producers and amending Regulation (EC) No 1567/97

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 (4) thereof,

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

Whereas:

A. **PREVIOUS PROCEDURE**

(1) By Regulation (EC) No 1567/97 [2] (hereinafter referred to as 'the definitive Regulation'), the Council imposed a definitive anti-dumping duty of 38 % on imports of leather handbags originating in the People's Republic of China (hereinafter referred to as 'the PRC') with the exception of imports from several exporting producers for which the Council imposed individual duty rates.

B. **PRESENT PROCEDURE**

(2) The Commission subsequently received five applications to initiate a 'new exporter' review of the definitive Regulation, pursuant to Article 11 (4) of Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation'). These applications were lodged by Gainth Industrial Ltd, Macia Company Ltd, Yen Sheng Factory Ltd, Dongguan All Be Right Leathern Products Co. Ltd and Panyu Simone Handbag Ltd (hereinafter referred to as 'the applicants'). The applicants claimed that they met the conditions for individual treatment, that they were not related to any of the exporting producers subject to the existing measures with regard to the product concerned, that they had not exported the product concerned to the Community during the period of investigation on which the anti-dumping measures were based, i.e. the period from 1 April 1995 to 31 March 1996 (hereinafter referred to as 'the original investigation period'), but that they had exported the product concerned to the Community subsequently.

(3) The Commission examined the evidence submitted by the applicants, and considered it sufficient to justify the initiation of a review pursuant to Article 11(4) of the Basic Regulation. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by Regulation (EC) No 152/1999 [3], a review of the definitive Regulation with regard to the five applicants and commenced its investigation.

The Regulation initiating the review also repealed the anti-dumping duty imposed by the definitive Regulation with regard to imports of the product concerned, produced and exported to the Community by the applicants, and directed customs authorities, pursuant to Article 14(5) of the Basic Regulation, to take appropriate steps to register such imports.

(4) The product concerned by the review was the same product as that described in Article 1 (2) of the definitive Regulation, namely, bags, whether or not with shoulder strap, including those without handle, with outer surface of leather, of composition leather or patent leather, designed primarily to contain small objects for personal use, such as keys, purses, make-up and cigarettes, regardless of their size and form.

(5) 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.

(6) The Commission sent questionnaires to the applicants. All five applicants submitted replies to the questionnaire and two of them also requested market economy status.

(7) In the course of the investigation, Dongguan All Be Right Leathern Products Co. Ltd abandoned its application for a 'new exporter' review. Consequently, subsequent to on-the-spot verifications relating to market economy status, no on-the-spot verification relating to 'new exporter' status and export prices was carried out at its premises.

(8) 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 following companies:

[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. Regulation as amended by Regulation (EC) No 2380/98 (OJ L 296, 5.11.1998, p. 1).
[3] OJ L 18, 23.1.1999, p. 10.

— Dongguan All Be Right Leathern Products Co. Ltd, Dongguan and Beijing, PRC,

— York Star Co. Ltd., Hong Kong (in respect of Dongguan All Be Right Leathern Products Co. Ltd),

— Dongguan Hsin Wan Foreign Trade Development Co., Dongguan, PRC (in respect of Dongguan All Be Right Leathern Products Co. Ltd),

— Panyu Simone Handbag Ltd, Guangzhou, PRC,

— Simone Accessories Collection Ltd., Kyungki-do, Republic of Korea (in respect of Panyu Simone Handbag Limited),

— Gainth Industrial Ltd, Hong Kong,

— Macia Company Ltd, Hong Kong, and Yen Sheng Factory Ltd, Hong Kong (as these two applicants are related, their applications were treated jointly).

(9) The investigation period for the current investigation was 1 April 1996 to 31 December 1998 (hereinafter referred to as 'the current investigation period').

C. 'NEW EXPORTER' STATUS

(10) It was examined whether the applicants met the criteria for individual treatment, were not related to any of the exporting producers subject to the existing measures with regard to the product concerned, had not exported the product concerned to the Community during the original investigation period and had exported the product concerned to the Community subsequent to the original investigation period. The findings regarding the various applicants are as follows:

1. **Gainth Industrial Ltd**

(11) This company originally claimed that it had exported 6 400 units of the product concerned to the Community subsequent to the original investigation period. However, upon verification, this figure was found to be incorrect. The applicant admitted the inaccuracy of its first submission and eventually claimed that 86 units of the product concerned were exported to the Community. These 86 units concern one single model.

(12) The information submitted by the applicant and verified on the spot revealed that the model concerned was a document bag or briefcase and not a handbag. Indeed, it is part of a collection composed of leather briefcases exclusively. The relevant invoice indicated 'leather document bag' and the importer declared the model concerned in the Single Administrative Document under the CN code 4202 11 90 namely, trunks, suitcases, vanity cases, executivecases, briefcases, school satchels and similar containers.

(13) The applicant contested the classification of document bag for the model concerned and put forward two arguments:

— According to the applicant, the products actually exported corresponded to a redesigned version of the original leather briefcase collection, and the model concerned as a consequence does not relate to a briefcase anymore.

In this respect, it should be pointed out that the applicant has submitted different versions of design specifications of the model concerned and failed to bring any indisputable evidence as to the exact physical appearance of the model actually exported. However, these design specifications do not in all cases not significantly differ from those of the other document bags or briefcases contained in the collection. Furthermore, the explanation given by the importer confirms that the model concerned is not a leather handbag, as his designer conceived the new collection as multifunctional bags to meet the need of the executive woman for a bag able to contain documents as well as small objects. Consequently, the model concerned does not meet the definition of the product concerned as set out in the definitive Regulation.

— The applicant further claimed that the model concerned falls under the definition of handbags set out in the definitive Regulation, as this definition refers to handbags 'regardless of their size and form'. The company put forward the argument that Regulation (EC) No 2380/98, which amended the definitive Regulation, expressly brought backpacks and shopping bags within the scope of the product concerned.

In this respect, it should be pointed out that Regulation (EC) No 2380/98 did not bring backpacks and shopping bags within the scope of the product concerned, but only clarified the scope of the definitive measures (see Recital 9 of that Regulation). This clarification specifies that backpacks and shopping bags have to fall under the definition of handbags (see Recital 4 above) given in the definitive Regulation in order to be covered by the definitive measures. This clarification was added in order to avoid circumvention by declaration of imports under CN codes other than the one corresponding to leather handbags.

(14) In the light of these findings, it was concluded that the applicant failed to prove that it had actually exported leather handbags to the Community subsequent to the original investigation period.

(15) It should also be noted that the applicant requested to take into account sales made to a German company after the current investigation period and the initiation of the present review. It should be pointed out that this information was submitted far beyond the deadline established in Regulation (EC) No 152/1999 pursuant to Article 6(2) of the Basic Regulation and after the on-the-spot verification took place, making it impossible to verify its accuracy as required by Article 6(8) of the Basic Regulation. This seems particularly important considering the large number of material errors in the information submitted by the applicant.

Moreover, it should be noted that the consistent application of Article 6(1) of the Basic Regulation by the Community institutions has been to limit findings to the investigation period unless the effects of new circumstances are manifest, undisputed, lasting, and not open to manipulation or do not stem from deliberate action of interested parties. These conditions are not met in this case. These sales are sporadic exports to the Community.

(16) On the basis of the foregoing, the application had to be rejected as inadmissible.

2. **Macia Company Ltd and Yen Sheng Factory Ltd**

(17) As mentioned above, these two applicants are related companies and their applications were therefore examined jointly.

(18) In its response to a deficiency letter, Macia Company Ltd claimed that one of the manufacturing units it operated in the PRC did not have a legal identity. However, during the on-the-spot verification, it was discovered that this manufacturing unit was a Sino-foreign cooperative joint venture and consequently a separate legal entity. Consequently, misleading information on the corporate structure of the applicants has been submitted and thus, all information regarding their corporate structure is to be disregarded in accordance with Article 18 of the Basic Regulation. This resulted in the applicants' inability to prove that they complied with the conditions as laid down in Article 11(4) of the Basic Regulation.

Even though the applicants submitted subsequent to this finding a response to the part of the questionnaire relating to individual treatment in respect of this related company, this submission constituted a substantial quantity of new information which was received by the Commission far beyond the deadlines set in Regulation (EC) No 152/1999 pursuant to Article 6(2) of the Basic Regulation, rendering impossible a proper verification of it.

(19) Moreover, even in the event this newly submitted information having been provided within a reasonable period, the Commission would not have been able to verify that the conditions for 'new exporter' status are met, as important information was missing. Particularly, the applicants were unable to prove whether the above-mentioned related joint venture had not exported the product concerned to the Community during the original investigation period. As a matter of fact, neither proper audited accounts nor documents showing the destinations of sales have been provided. In this respect, it should be noted that the related company sold the product concerned to customers located in the PRC in 1995. However, the company was subject to a restriction to sell on the domestic market. This restriction implies that a part of the production must have been exported in 1995, which is largely covered by the original investigation period, the Community being amongst possible destinations. Consequently, the final destination of these sales is unknown.

(20) On the basis of the foregoing, the applications had to be rejected as inadmissible.

3. **Panyu Simone Handbag Ltd**

(21) This applicant was unable to demonstrate that it had actually produced the leather handbags it sold for export to the Community during the current investigation period. Consequently, it could not be established that Panyu Simone Handbag Ltd was the exporting producer of the goods in question.

(22) Furthermore, the applicant was unable to demonstrate to the satisfaction of the Commission that it did not sell leather handbags for export to the Community during the original investigation period.

(23) Finally, as various products were classified under 'leather handbags' for internal purposes, the description of the product on the invoices did not coincide with the product sold. The verification of the transaction-by-transaction listing of export sales of the product concerned revealed that products such as PVC handbags and cosmetic bags had wrongly been included.

(24) Consequently, as this applicant was unable to prove it complied with the criteria laid down in Article 11(4) of the Basic Regulation, its application had to be rejected as inadmissible.

4. **Dongguan All Be Right Leathern Products Co. Ltd**

(25) As this applicant abandoned its application for a 'new exporter' review in the course of the investigation and consequently cooperated insufficiently, the Commission was unable to establish whether the company was indeed a 'new exporter'.

D. **CHANGE IN THE STRUCTURE OF OPERATIONS OF TWO EXPORTING PRODUCERS, BENEFITING FROM AN INDIVIDUAL DUTY RATE ESTABLISHED IN COUNCIL REGULATION (EC) No 1567/97**

(26) Two exporting producers, benefiting from individual duty rates established in Regulation (EC) No 1567/97, in the version as amended by Regulation (EC) No 2380/97, informed the Commission that after the original investigation period, they set up new factories involved in the manufacture and export to the Community of the product concerned. These companies also provided appropriate evidence requested by the Commission in this respect. The situation was examined and it was concluded that this development did not result in a significant change.

E. **RESULTS OF THE INVESTIGATION**

(27) In view of the inadmissibility of the five 'new exporter' applications, it was not necessary to establish export prices, normal values and dumping margins in respect of the applicants.

As the calculation of normal value was not necessary, no determination on market economy status pursuant to Article 2(7) of the Basic Regulation was carried out in respect of the applicants that requested such status.

(28) Consequently, it was concluded that the country-wide ad valorem anti-dumping duty of 38 % imposed by the definitive Regulation should be reimposed in respect of the five applicants.

(29) In respect of the two exporting producers having changed the structure of their operations as explained at Recital 26, it was concluded that the individual anti-dumping duty rates set for these companies should apply to the newly established factories.

F. **RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY**

(30) The country-wide anti-dumping duty of 38 % applicable to the five applicants should be levied retroactively on the imports which have been subject to registration.

G. **DISCLOSURE AND DURATION OF THE MEASURES**

(31) The applicants were informed of the facts and considerations on the basis of which it was intended to recommend the reimposition of the country-wide duty rate imposed by the definitive Regulation on their exports to the Community.

(32) This review does not affect the date on which the definitive Regulation will expire pursuant to Article 11(2) of the Basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Regulation (EC) No 1567/97 is hereby reimposed on imports of handbags with outer surface of leather, of composition leather or patent leather falling within CN code 4202 21 00 originating in the People's Republic of China and produced by Gainth Industrial Ltd, Macia Company Ltd, Yen Sheng Factory Ltd (including its related manufacturer Dongguan Dalang Huqiu Leathers Co. Ltd), Dongguan All Be Right Leathern Products Co. Ltd and Panyu Simone Handbag Ltd.

2. For the purpose of this Regulation, leather handbags shall be understood to mean bags, whether or not with shoulder strap, including those without handle, with outer surface of leather, of composition leather or patent leather, designed primarily to contain small objects for personal use, such as keys, purses, make-up and cigarettes, regardless of their size and form.

3. The rate of duty applicable to the net, free-at-Community-frontier price before duty shall be 38 %.

4. The duty hereby imposed shall be levied on imports of the product concerned which have been registered in accordance with Article 3 of Regulation (EC) No 152/1999.

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

Article 2

Article 1 (2) of Regulation (EC) No 1567/97 is hereby amended as follows: The words 'Lucci Creations Ltd' shall be replaced by 'Lucci Creations Ltd including its related company Wiemer Leathergoods Manufacturing Co. Ltd.' and the words 'Ever Trust Leather Products Shenzen Co. Ltd.' shall be replaced by 'Ever Trust Leather Products Shenzen Co. Ltd. including its related company Superior Leather Ltd.'.

Article 3

This Regulation shall enter into force on the day following that of 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, 24 January 2000.

For the Council

The President

J. GAMA