# COMMISSION REGULATION (EC) No 799/2000

## of 17 April 2000

## terminating the investigation concerning the alleged circumvention of anti-dumping measures imposed by Council Regulation (EEC) No 2861/93 on imports of certain magnetic disks (3,5″ microdisks) originating in Taiwan and the People's Republic of China by assembly operations in the Community, and discontinuing the registration of imports of microdisk parts introduced by Regulation (EC) No 1646/1999

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 dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 905/98 [2], and in particular Articles 9, 13 and 14 thereof,

After consulting the Advisory Committee,

Whereas:

### A. PROCEDURE

(1) On 29 July 1999, by Regulation (EC) No 1646/1999 [3], the Commission initiated an investigation pursuant to Article 13 of Regulation (EC) No 384/96 (hereinafter referred to as 'the basic Regulation') to investigate the alleged circumvention of the anti-dumping duties imposed by Council Regulation (EEC) No 2861/93 [4], as amended by Regulation (EC) No 2537/1999 [5], on imports of certain magnetic disks (3,5″ microdisks) originating in Taiwan and the People's Republic of China by assembly operations in the Community, and instructed customs authorities, pursuant to Article 14(5) of the basic Regulation, to register the imports of the main microdisk parts covered by this investigation.

(2) The investigation was initiated following a request lodged on 14 June 1999 by the Committee of European Diskette Manufacturers (Diskma). The request contained sufficient prima facie evidence, in accordance with Article 13(3) of the basic Regulation, that anti-dumping duties on imports of 3,5″ microdisks originating in Taiwan and the People's Republic of China were being circumvented by imports of microdisk parts from these countries used in assembly operations in the Community. This evidence was considered suficient to justify the initiation of an investigation.

(3) The Commission officially advised the authorities of Taiwan and the People's Republic of China of the initiation of the investigation and sent questionnaires to the microdisk assembler named in the request and to its related exporter in Taiwan. Questionnaires were also sent to exporting producers in the People's Republic of China and Taiwan which cooperated in the original investigation. The companies concerned made their views known in writing.

(4) The investigation covered the period from 1 July 1998 to 30 June 1999 (hereinafter referred to as the 'IP').

(5) The Commission received complete replies from the following companies:

(i) Exporters of microdisk parts:

— CMC Magnetics Corporation, Taipei, Taiwan ('CMC')*,

— Vigobyte International Corporation, California, United States of America,

(ii) Assembler in the Community:

— Europa Magnetics Corporation, Cramlington, United Kingdom ('EMC')*.

(6) The Commission verified all the information it deemed necessary and carried out verification visits at the premises of the companies indicated above by an asterisk.

### B. SCOPE OF THE INVESTIGATION

(7) Articles 13(1) and (2) of the basic Regulation provide for anti-dumping measures in force to be extended to imports of parts from the country subject to the measures when circumvention of the measures is taking place. The present investigation focussed on whether the criteria set out in Article 13(2) of the basic Regulation were met.

### C. FINDINGS

#### 1. Condition of Article 13(2)(a): Start or substantial increase of operations

(8) EMC started operations in 1993 and its activities increased constantly and substantially over the following years. Sales of microdisks assembled at EMC started immediately after the imposition of anti-dumping measures on Japan, the Republic of China and Taiwan in October 1993. These sales increased by around 270 % between 1994 and the IP. During the same period, EMC's share of the Community market increased by around 420 %. This substantial increase in sales was matched by a similar increase in assembly capacity. EMC's present capacity is estimated at a substantial proportion of total Community demand, although

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 128, 30.4.1998, p. 18.
[3] OJ L 195, 28.7.1999, p. 9.
[4] OJ L 262, 21.10.1993, p. 4.
[5] OJ L 307, 2.12.1999, p. 1.

capacity utilisation has declined over the last few years in line with the relative decline in Community consumption. It was therefore concluded that the condition set out in Article 13(2)(a) of the basic Regulation was met.

### 2. **Conditions of Article 13(2)(b): criteria of 60 % and 25 %**

(9) In accordance with Article 13(2)(b) of the basic Regulation, in order to establish circumvention, the Commission had to verify that the parts from the countries subject to the measures constituted 60 % or more of the total value of the parts of the assembled product and that the value added to the parts brought in was no more than 25 % of the manufacturing cost.

(10) The investigation established that EMC did not buy any microdisk parts shipped from the People's Republic of China. Most of the microdisk parts used by EMC in the assembly operations were supplied by the assembler's parent company in Taiwan (CMC). Large quantities of an important component were supplied by a company indirectly related to EMC, which was neither located in the Community nor in the People's Republic of China or Taiwan. The remaining parts were sourced from within the Community.

i) *First criterion: 60 % of the total value of the parts constituting the assembled product*

(11) For carrying out the 60 % test, all parts under investigation were considered. Packing materials were excluded from the calculations since in themselves they cannot be considered one of the technical and physical characteristics which define the product, and are added at a later stage of the production process, when all assembly activities have been concluded. The value of the components was established on the basis of the purchase prices of the goods when delivered to the assembler's premises (i. e. including transport costs, and, where applicable, import duties). Prices which had not been considred as being arms', length prices, and had therefore been constructed, were also considered at the level 'delivered to the assembler's premises'.

(12) The value of the Taiwanese parts was then compared to the total value of the parts of the assembled product. It was found that the percentage of Taiwanese parts accounted for well over 60 % of the total value of the parts. It was therefore concluded that the first criterion set out in Article 13(2)(b) of the basic Regulation was met.

ii) *Second criterion: 25 % of the value added to the parts brought in*

(13) For carrying out the 25 % test, the value added to the parts brought in was generally determined to be the sum of labour and depreciation costs and other manufacturing overheads incurred by the assembler in respect of those parts. Selling, general and administrative expenses were not considered for the purpose of this calculation. Labour costs and factory overheads relating to packing were also excluded, for the reasons mentioned above (see recital 11). The value added thus established was then expressed as a percentage of the manufacturing cost which consists of the value of all parts, based on the factory-delivered, arm's length purchase prices of these parts plus the value added to the parts during the assembly or completion operation.

The value added was reduced by those amounts of State grants which related to the manufacturing costs of the assembled product.

(14) The average value added thus established during the investigation period was found to be above the 25 %, threshold set by Article 13(2)(b) of the basic Regulation. Consequently, the second criterion mentioned in that Article is not met and the assembly operation cannot be considered as circumvention within the meaning of Article 13(2) of the basic Regulation.

### 3. **Conditions of Article 13(2)(c): undermining of the remedial effects of the duty and evidence of dumping**

(15) As the investigation showed that the 25 % criterion was not met, and that the proceeding should consequently be terminated, it was not considered necessary to examine these aspects.

## D. **TERMINATION OF THE INVESTIGATION**

(16) In the light of the above findings and considerations, the present circumvention investigation should be terminated without extension of the anti-dumping duties imposed. The registration of microdisk parts introduced by Regulation (EC) No 1646/1999 should therefore be discontinued and that Regulation be repealed.

(17) The Advisory Committee was consulted and raised no objections to termination.

(18) Interested parties were informed of the essential facts and considerations on the basis of which the Commission intended to terminate the investigation and were given the opportunity to comment. The only substantive comment was receiveed from EMC, which considered the exclusion of packing costs to be incorrect, but agreed with the conclusions reached by the Commission,

HAS ADOPTED THIS REGULATION:

*Article 1*

The investigation concerning the alleged circumvention of anti-dumping measures imposed by Council Regulation (EEC) No 2861/93 on imports of certain magnetic disks (3,5″ microdisks) originating in Taiwan and the People's Republic of China by assembly operations in the Community initiated by Regulation (EC) No 1646/1999 is hereby terminated.

*Article 2*

Regulation (EC) No 1646/1999 is hereby repealed.

*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, 17 April 2000.

*For the Commission*

Pascal LAMY

*Member of the Commission*