COUNCIL REGULATION (EC) No 1293/2007

of 30 October 2007

repealing the anti-dumping duties imposed by Regulation (EC) No 1050/2002 on imports of recordable compact discs originating in Taiwan and allowing for their repayment or remission and repealing the countervailing duties imposed by Regulation (EC) No 960/2003 on imports of recordable compact discs originating in India, allowing for their repayment or remission and terminating the proceeding in their respect

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] (the basic anti-dumping Regulation), and in particular Article 11(3) thereof,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community (the basic anti-subsidy Regulation) [2], and in particular Article 19 thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force and subject of the review

(1) Definitive anti-dumping duties applicable to imports of recordable compact discs originating in Taiwan were imposed on 18 June 2002 by Council Regulation (EC) No 1050/2002 of 13 June 2002 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of recordable compact discs originating in Taiwan [3] (the original anti-dumping proceeding). They ranged from 17,7 % to 38,5 %. These measures lapsed *ipso iure* on 18 June 2007 in accordance with the Commission Notice of the expiry of certain anti-dumping measures [4].

(2) Definitive countervailing duties on imports of recordable compact discs (CD-Rs) from India were imposed on 5 June 2003 by Council Regulation (EC) No 960/2003 of 2 June 2003 imposing a definitive countervailing duty on imports of recordable compact discs originating in India [5] (the original anti-subsidy proceeding). They amounted to 7,3 %.

2. Previous investigations concerning imports of CD-Rs from the People's Republic of China, Hong Kong and Malaysia

(3) By Decision 2006/753/EC [6], the Commission terminated an anti-dumping proceeding concerning imports of CD-Rs originating in the People's Republic of China (PRC), Hong Kong, and Malaysia on grounds of lack of Community interest in the imposition of measures (the termination Decision). It was concluded that due to its low market share the Community industry was not likely to obtain any significant benefits from the imposition of measures. The imposition of measures was thus considered disproportionate in view of the substantial negative effects on importers, distributors, retailers and consumers.

3. Initiation of a review

(4) The initiation of a partial interim review of the anti-dumping measures applicable to imports of recordable compact discs originating in Taiwan and of a partial interim review of the countervailing measures applicable to imports of recordable compact discs originating in India was announced on 22 March 2007 in the *Official Journal of the European Union* (the notice of initiation) [7].

(5) The reviews, initiated on the Commission's own initiative, were both limited in scope to the examination of the Community interest, with the decision thereon possibly having retroactive effect as of 5 November 2006, i.e. the date of entering into force of the termination Decision. For the purposes of procedural efficiency, the reviews of both anti-dumping duties applicable to imports of CD-Rs from Taiwan and of countervailing duties applicable to imports of CD-Rs from India were combined in one investigation.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[3] OJ L 160, 18.6.2002, p. 2.
[4] OJ C 130, 12.6.2007, p. 17.
[5] OJ L 138, 5.6.2003, p. 1.
[6] Commission Decision 2006/753/EC of 3 November 2006 terminating the anti-dumping proceeding concerning imports of recordable compact discs (CD+/-R) originating in the People's Republic of China, Hong Kong and Malaysia (OJ L 305, 4.11.2006, p. 15).
[7] OJ C 66, 22.3.2007, p. 16.

(6) As mentioned above, the anti-dumping measures imposed on imports originating in Taiwan lapsed on 18 June 2007. As a consequence, the review concerning Taiwan has been discontinued. However, it was formally conducted until that date and the Commission considered most notably the question of retroactive repealing of duties paid between 5 November 2006 and 18 June 2007.

(7) Due to the need for procedural efficiency and in order to ensure overall consistency of its actions, the Commission combined the conclusions of both reviews in the present Regulation.

4. **Parties concerned by the proceeding**

(8) The Commission officially advised the Community producers, importers and users as well as exporters and representatives of India and Taiwan of the initiation of the proceeding. All interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. Due to the fact that the reviews have been limited to aspects of Community interest, the Commission invited only parties located in the Community, i.e. Community producers, importers and users, to fill in the questionnaires. Questionnaire replies were received from one producer, 14 importers, and 10 users.

(9) The Commission also received a letter from the Committee of European CD-R Manufacturers (CECMA), which represented the complainant in the original anti-dumping and anti-subsidy proceedings and in the proceedings concluded by the termination Decision — as well as a letter from the former representative of the company D as identified in the termination Decision.

(10) Further, the Commission's services received submissions from other interested parties, most notably distributors and suppliers of an Indian exporter.

(11) The Commission's services duly analysed all submissions and arguments put forward by the interested parties. Given the state of Community production, however, the conclusions of the present review will be limited to the identification of the Community industry.

5. **Investigation period**

(12) The investigation of aspects of Community interest covered the period from 1 January 2006 to 31 December 2006 (investigation period or IP). The examination of trends relevant for the assessment of Community interest covered the period from 1 January 2003 to the end of the investigation period (period considered).

6. **Product concerned and like product**

6.1. *Product concerned*

(13) The product under review is recordable compact discs (CD-Rs) originating in India (the product concerned), currently classifiable within CN code ex 8523 40 11. This CN code is given only for information.

(14) The same product originating in Taiwan was under review between 22 March 2007 when the notice of initiation was published and 18 June 2007 when the anti-dumping duties applicable to imports of CD-Rs from Taiwan lapsed.

(15) The product concerned is polycarbonate disc, which is coated with a layer of dye, a layer of reflective material and a protective layer. Although recording on such discs can be done in several steps, the recorded information cannot be erased. The disc is an optical storage medium for digital data or sound.

(16) CD-Rs can be distinguished according to the type of data stored (data CD-Rs versus music CD-Rs), the storage capacity, the reflective metal layer and whether or not the CD-Rs are printed upon. All types of CD-Rs share the same physical and technical characteristics and are used for the same purposes. Therefore they are considered to constitute a single product.

6.2. *Like product*

(17) In the framework of the present proceedings no comments were made challenging the comparability of the CD-Rs imported to or produced in the Community. On these grounds all types of CD-Rs originating in India or Taiwan and produced in the Community are considered to be alike within the meaning of Article 1(4) of the basic anti-dumping Regulation and Article 1(5) of the basic anti-subsidy Regulation.

B. **COMMUNITY PRODUCTION AND COMMUNITY INDUSTRY**

1. **Community production and Community industry in the proceedings concluded by the termination Decision**

(18) In these proceedings (see recital 28, and 58 et seq. of the termination Decision), the Commissions services established that Community production within the meaning of Article 4(1) of the basic Regulation was constituted by 10 producers. Only one of them was considered to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic anti-dumping Regulation (Manufacturing Advanced Media (MAM-E)).

2. **Community production and Community industry in the current proceedings**

(19) None of the producers deemed to constitute the Community production in the termination Decision cooperated in the current proceeding.

(20) Further, the Commission received evidence that the sole company constituting the Community industry in the proceeding which led to the termination Decision underwent liquidation proceedings. This was confirmed in the letter sent by its former representative. The Commission also received a copy of a court decision commencing the liquidation proceedings, whereby the activities of the company ceased. The questionnaire sent out by the Commission was returned with the annotation — *liquidation judiciaire*.

(21) In addition, although CECMA stated that it supported the continued imposition of measures, it did not submit any questionnaire or evidence on behalf of any Community producer — member of the association.

(22) Another company (Company A, as identified in the termination Decision) informed the Commission that it had ceased production in the Community.

(23) Finally, the Commission received also a reply from Company B (as identified in the termination Decision). No evidence was presented that would contradict the findings set out in the termination Decision, i.e. that company B should not be included in the definition of the Community industry and that its production should be excluded from the definition of Community production (see recital 40 of the termination Decision).

(24) On these grounds it is concluded that there is no remaining Community industry, and consequently no Community interest.

C. **RETROACTIVE APPLICATION**

(25) In view of the above findings, the anti-dumping measures applicable to imports of CD-Rs originating in Taiwan and the countervailing measures applicable to imports of CD-Rs originating in India should be repealed with a retroactive effect to the date of entering into force of the termination Decision.

(26) Consequently, the definitive anti-dumping duties paid or entered in the accounts pursuant to Regulation (EC) No 1050/2002 on imports of CD-Rs originating in Taiwan and the definitive countervailing duties paid or entered into account pursuant to Regulation (EC) No 960/2003 on imports of CD-Rs originating in India, and released for free circulation as from 5 November 2006 should be repaid or remitted.

(27) Repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation,

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping duties on imports of recordable compact discs (CD-Rs) originating in Taiwan imposed by Regulation (EC) No 1050/2002 and the countervailing duties on imports of recordable compact discs (CD-Rs) originating in India imposed by Regulation (EC) No 960/2003 are hereby repealed.

Article 2

The anti-subsidy proceedings concerning imports of CD-Rs originating in India are hereby terminated.

Article 3

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

Article 1 shall apply from 5 November 2006.

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

Done at Luxembourg, 30 October 2007.

For the Council

The President

F. NUNES CORREIA