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(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 9 February 1987

accepting an undertaking given in connection with the anti-dumping proceeding concerning imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China, and terminating the investigation

(87/104/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Article 10 thereof,

Having regard to the proposal from the Commission, presented after consultation within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. Procedure

(1) In April 1986 the Commission received a complaint lodged by the 'Fédération européenne de l'industrie de la broserie et de la pinceauterie' on behalf of Community producers in all Member States of paint, distemper, varnish and similar brushes whose collective output constitutes practically all Community production of the product in question. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-dumping proceeding concerning

imports into the Community of paint, distemper, varnish and similar brushes falling within Common Customs Tariff subheading ex 96.01 B III and corresponding to NIMEXE code 96.01-49, originating in the People's Republic of China and commenced an investigation.

- (2) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.
- (3) The majority of the known producers and the exporter and a few importers made their views known in writing. Some have requested and have been granted hearings.
- (4) No submissions were made on behalf of Community purchasers of the product in question.
- (5) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

EEC producers

Bechtloff KG, Burk, Federal Republic of Germany,
 Briton Chadwick, Attleborough, United Kingdom,
 D. O'Sullivan & Co. Ltd, Cork, Ireland,
 Fleetwood Products Ltd, Dublin, Ireland,
 L. G. Harris & Co. Ltd, Stoke Prior, Bromsgrove, United Kingdom,
 Kronen-Pinselabrik GmbH & Co. KG, Lohne, Federal Republic of Germany,

⁽¹⁾ OJ No L 201, 30. 7. 1984, p. 1.

⁽²⁾ OJ No C 103, 30. 4. 1986, p. 2.

Messerer GmbH, Wieseth, Federal Republic of Germany,

Mosley-Stone Ltd, Stockport, United Kingdom,

H. L. Sterkel GmbH, Ravensburg, Federal Republic of Germany,

Wistoba-Pinsselfabrik, Bad Lauterberg, Federal Republic of Germany.

EEC importers

Bristle, Hair & Fibre Company Ltd, London, United Kingdom,

Charles Bentey & Son Ltd, Loughborough, United Kingdom,

Tobias Braude & Co. Ltd, London, United Kingdom,

Delbanco Meyer & Co. Ltd, London, United Kingdom.

Third country

Harris (Ceylon) Ltd, Meegoda, Sri Lanka

The Commission requested and received detailed written submissions from almost all the complainant Community producers, the exporter and a few importers concerned and verified the information therein to the extent considered necessary.

- (6) The investigation of dumping covered the period from 1 April 1985 to 31 March 1986.

B. Normal value

- (7) In order to establish whether the imports from the People's Republic of China were dumped, the Commission had to take account of the fact that this country does not have a marked economy and the Commission therefore had to base its determination on the normal value in a market economy country. In this connection, the complainants had suggested the Sri Lankan market.

The Chinese exporter and one importer challenged the choice of Sri Lanka as a third country market but made no proposal as to another analogue country.

More specifically, one importer maintained that there was virtually no production in Sri Lanka. This assertion proved to be factually incorrect.

- (8) The Commission is satisfied that there are no extraordinary differences in production processes between Sri Lanka and the exporting country.

It was furthermore established that there was sufficient internal competition in Sri Lanka between two major and a number of smaller producers to ensure that price levels were in a reasonable proportion to production costs.

- (9) The Commission therefore concluded that it would be appropriate and not unreasonable to determine

normal value on the basis of domestic prices in Sri Lanka.

C. Export price

- (10) Export prices were determined on the basis of the prices actually paid or payable for the products sold for export to the Community.

D. Comparison

- (11) For the purpose of comparing normal value with export prices the Chinese exporter claimed an allowance for import charges and indirect taxes in Sri Lanka; this was granted. No other allowances were claimed.

All comparisons were made at ex-works level.

E. Margins

- (12) The above preliminary examination of the facts shows the existence of dumping in respect of the Chinese exporter, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

Varying margins of dumping were established depending on the type of brush concerned and the importing Member State. The weighted average dumping margin for all exports to the Community was found to be in excess of 100 %.

F. Injury

- (13) It was found during the investigation that approximately 90 % of Chinese exports were concentrated in three Community markets, namely Germany, Ireland and the United Kingdom. The injury assessment therefore centred generally on these Member States.

- (14) With regard to injury caused by the dumped imports the evidence available to the Commission shows that imports into the Community from the People's Republic of China were already substantial in 1980 and more than doubled between 1980 and 1981. Ever since, they have remained at a very high annual level of at least 25 million pieces⁽¹⁾ and substantially exceeded this amount in several years. The exact figures were, however, greatly influenced by large-scale shipments of brushes which would normally only have found their way onto the markets gradually but which nevertheless, since they were exported and imported in large consignments, have had an abrupt and immediate effect on the import figures, thus resulting in sharp fluctuations.

⁽¹⁾ Exact figures were supplied by the exporter but are confidential; the Community import statistics cannot be used as such since they cover a variety of products and the quantities may refer in part to repacked lots of brushes.

- (15) As to market shares, since only a small number of importers have cooperated satisfactorily it proved impossible to establish with confidence exact market shares based on effective sales in the Community. The Commission, however, could satisfy itself on the basis of information supplied by the Chinese exporter that the market share held since 1982 by Chinese imports has been between 30 % and 40 % and that annual fluctuations generally remained within this bracket.
- (16) The resale prices at which the imported Chinese product was resold in the Community undercut the prices of the Community industry by more than 50 % on average during the investigation period; the exact levels of undercutting varied according to product types. The Commission found that the resale prices of these imports were, in general, lower by far than those required to cover the costs of Community producers and provide a reasonable profit. There were even instances where Community producers received offers of Chinese brushes from importers in the Community at prices below their purchase price for the principal raw material involved, namely bristles, which was also supplied by the same exporter in the People's Republic of China.
- (17) The consequent impact on the Community industry in the three Member States principally concerned has been a decrease in production between 1982 and the period of investigation which, according to the market concerned, varied between 28 % and 15 %. This led to a substantial reduction in capacity utilization for those producers which, given the situation, decided not to reduce their capacity or which, unlike a number of producers, did not diversify into other product lines.

The Commission further examined whether the dumped imports had a major effect on stock figures and employment. As to stock figures it was found that in view of the fact that the producers were generally small firms they were normally obliged to reduce production, either temporarily or permanently, rather than to increase stocks the financing of which would have proved impossible for them.

As to employment, the available figures were not found to lend themselves to any meaningful conclusion because most producers had introduced new machinery rationalizing the production process and almost all producers manufactured a variety of products for which their workforce would be equally available.

It was, however, found that a number of brush manufacturers had ceased production in recent

years for which the availability of very cheap dumped Chinese brushes was a contributory factor.

When establishing the exact market share held by the Community producers the Commission encountered the same difficulties as described above in the context of the share held by Chinese exports. The Commission could, however, establish with confidence that, subject to annual fluctuations, their market share remained between 50 % and 60 %.

As regards the profit situation of the remaining Community producers the Commission established that, confronted by the very low prices of Chinese brushes which normally did not even cover the variable production costs of the Community producers, the latter normally followed one of a number of different options or a combination of these options to remain in business. They either diversified into manufacturing other related products and thus reduced their overhead costs for brushes; or they simply refused to sell their product below cost since as small companies they could not have sustained such action for any length of time; or they purchased limited quantities of Chinese brushes themselves from independent importers and sold them at a profit thus subsidizing their own production.

In the latter context, the Commission established on the basis of the available data that the amount of Chinese brushes sold by the Community producers in the period of investigation varied, according to the Member State, between 0 % and about 25 % of all sales of the Chinese product and that contrary to the action of some firms which ceased producing brushes in order to sell imported products only, the remaining producers only started selling Chinese brushes in order to prevent their established markets from being taken over by suppliers offering imported goods only; that the Community producers did not at any stage take the initiative to import Chinese products; that, consequently, the injury findings are not invalidated by the fact that the Community producers themselves sold limited quantities of Chinese goods. This conclusion was not contested by the exporter.

- (18) Some importers claimed that they had created a new market for cheap throw-away brushes, especially in supermarkets and do-it-yourself stores and that the traditional Community producers were not interested in selling to this market. The Commission cannot accept this assertion. A new market is not created by simply selling an established product at less than half the price at which it is normally sold in the market. In any event, it is only

because of the low dumping prices that a consumer is more readily prepared to consider discarding a brush after a limited use instead of supporting the additional expense and inconvenience of cleaning it. Furthermore, it is understandable that the Community industry is not interested in selling, and cannot sell for the sake of its own survival, at prices below its variable production costs.

- (19) The Commission has considered whether injury has been caused by other factors such as imports from other sources or a substantial change in the pattern of consumption. Imports from other third countries have been estimated at a level never in excess of 10 % in the market concerned and consumption does not appear to have undergone any substantial changes since 1982. However, the continuing high level of dumped imports and especially the very low prices at which they are offered for sale in the Community led the Commission to determine that the effects of the dumped imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China, taken in isolation, have to be considered as constituting material injury to the Community industry concerned.

G. Community interest

- (20) No observations were received from any consumers of the product in question. In view of the serious difficulties of the Community industry as set out above, the Commission has come to the conclusion that it is in the Community's interest that action be taken.

H. Undertaking

- (21) Following the completion of the preliminary investigation the exporter concerned offered an undertaking concerning its exports of paint, distemper, varnish and similar brushes.

The effect of the said undertakings will be that exports cease to such an extent that the injury suffered by the Community industry is eliminated. It appears that correct operation of the undertaking can be effectively monitored.

In these circumstances, the undertaking offered is considered acceptable and the investigation may, therefore, be terminated without imposition of anti-dumping duties.

- (22) Objections to this course were raised in the Advisory Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The undertaking offered by the China National Native Produce & Animal By-Products Import & Export Corporation in connection with the anti-dumping proceeding concerning imports of paint, distemper, varnish and similar brushes falling within Common Customs Tariff subheading ex 96.01 B III, corresponding to NIMEXE code 96.01-49, originating in the People's Republic of China, is hereby accepted.

Article 2

The investigation in connection with the anti-dumping proceeding referred to in Article 1 is hereby terminated.

Done at Brussels, 9 February 1987.

For the Council

The President

M. EYSKENS