

COMMISSION REGULATION (EC) No 502/98
of 3 March 1998

**imposing a provisional anti-dumping duty on imports of certain magnetic disks
(3,5" microdisks) originating in Indonesia**

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 amended by Regulation (EC) No 2331/96⁽²⁾, and in particular Articles 7 and 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 6 April 1995, the Commission announced, by a notice published in the *Official Journal of the European Communities*⁽³⁾ the initiation of an anti-dumping proceeding with regard to imports into the Community of certain magnetic disks (3,5" microdisks) originating in Canada, Indonesia, Macao and Thailand, and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged by the Committee of European Diskette Manufacturers (Diskma) on behalf of producers whose collective output of 3,5" microdisks represented a major proportion of Community production of these microdisks.

The complaint contained evidence of dumping of the said product, and of material injury resulting therefrom; this evidence was considered sufficient to justify opening a proceeding.

(3) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting countries, and the complainant, and gave the parties concerned the opportunity to make their views known in writing and to request a hearing.

(4) The Commission sent questionnaires to parties known to be concerned and received detailed information from the complainant Community producers, one producer in Indonesia, and one

producer and its related sales company in Thailand.

(5) The Commission carried out verification visits at the premises of the following companies:

(a) *Complainant Community producers*

Belgium: Sentinel Computer Products Europe NV, Wellen;

Germany: Boeder AG, Flörsheim am Main;

France: RPS Media SA (a subsidiary of Boeder AG), Albi; Sentinel France, SA (a subsidiary of Sentinel Computer Products Europe NV), Paris;

Italy: Computer Support Italy, srl, Verderio Inferiore.

(b) *Producers/exporters in the countries concerned*

Indonesia:

— PT Beneluxindo, Jakarta, and its related companies Benelux Manufacturing and Prime Standard in Hong Kong.

Thailand:

— V-SA Magnetic Co. Ltd, Bangkok (producer),

— V-SA Cast Co. Ltd, Bangkok (related sales company).

(6) For the purposes of establishing dumping, the investigation covered the period 1 March 1994 to 28 February 1995 (hereinafter referred to as the 'investigation period'). The examination of injury covered the period between 1992 and the investigation period.

(7) It is recalled that definitive anti-dumping duties have already been imposed on imports of 3,5" microdisks originating in Japan, Taiwan and the People's Republic of China by Council Regulation (EEC) No 2681/93⁽⁴⁾, in Hong Kong and the Republic of Korea by Council Regulation (EC) No 2199/94⁽⁵⁾, and in Malaysia, Mexico and the USA by Council Regulation (EC) No 663/96⁽⁶⁾.

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1.

⁽²⁾ OJ L 317, 6. 12. 1996, p. 1.

⁽³⁾ OJ C 84, 6. 4. 1995, p. 4.

⁽⁴⁾ OJ L 262, 21. 10. 1993, p. 4.

⁽⁵⁾ OJ L 236, 10. 9. 1994, p. 2.

⁽⁶⁾ OJ L 92, 13. 4. 1996, p. 1.

- (8) Owing to the volume and complexity of the data gathered and examined, and the parallel anti-circumvention investigation ⁽¹⁾ carried out pursuant to Article 13 of Regulation (EC) No 384/96 (hereinafter referred to as the 'Basic Regulation'), the duration of the investigation, which is not subject to the time limits laid down in Article 6(9) of the Basic Regulation, exceeded the period of one year.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Description of the product concerned

- (9) The products for which the proceeding was initiated were 3,5" microdisks, used to record and store encoded digital computer information (CN codes ex 8523 20 90 and ex 8524 90 91).
- (10) With respect to 3,5" microdisks falling within CN code ex 8524 90 91 (since 1 January 1996, CN code ex 8524 91 10) the investigation has shown that although in technical terms they fall within the description given in recital 9, these microdisks contain data or instructions (other than sound or images) of a kind used in automatic data-processing machines. On the basis of the facts currently available, it was concluded that such microdisks could not be viewed as one product together with microdisks falling within CN code ex 8523 20 90, which do not contain such data. Since, moreover, no evidence of dumping of injury was found concerning this product, the proceeding in respect of the latter should be terminated, and the findings will refer only to 3,5" microdisks falling within CN code ex 8523 20 90, these having been the subject of all prior proceedings.
- (11) The microdisks concerned were available in various types, depending on their storage capacity and on the way in which they were marketed. However, no significant differences existed in the basic physical characteristics and technology of the various types of microdisks, all of which, in addition, showed a high degree of interchangeability. In these circumstances, and in line with the position previously adopted by the Community institutions, all 3,5" microdisks falling within CN code ex 8523 20 90 should be considered as one product for the purposes of this proceeding.

2. Like product

- (12) The various types of microdisks classified under CN code ex 8523 20 90 which are manufactured in the Community or exported to the Community from the countries in question use the same basic technology and are alike in their essential physical characteristics and end-uses. They have, therefore, to be considered as a like product within the meaning of Article 1(4) of the Basic Regulation.

C. DUMPING

1. Canada, Macao and Thailand

- (13) The Commission found it unnecessary to establish whether imports of 3,5" microdisks originating in Canada, Macao and Thailand were dumped, since the injury caused by these imports during the investigation period was regarded as negligible. Therefore the Commission has terminated the proceeding concerning imports originating in these countries, by Decision 98/175/EC ⁽²⁾.

2. Indonesia

(a) Normal value

- (14) One Indonesian producer, which accounted for almost all recorded imports of the product in question into the Community from Indonesia, cooperated in the investigation. This producer obtained all its raw materials from its parent company in Hong Kong, while all its sales were handled by another of the parent's subsidiaries, a trading company also based in Hong Kong. The Indonesian producer, therefore, had no sales or purchasing departments, only a production facility and a shipping department.
- (15) The producer in question had no sales on the Indonesian market. Since the Commission had no information concerning any other producer in Indonesia selling in this market, the normal value had to be constructed in accordance with Article 2(3) of the Basic Regulation, that is on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative expenses (hereinafter referred to as

⁽¹⁾ OJ L 186, 25. 7. 1996, p. 14.

⁽²⁾ See page 32 of this Official Journal.

'SG&A expenses') and profit. Materials costs were based on the actual costs incurred by the Hong Kong parent. Other manufacturing costs were based on the actual costs incurred by the Indonesian producer. SG&A expenses were calculated, in accordance with Article 2(6)(c) of the Basic Regulation, on the basis of the general and administrative expenses incurred by the Indonesian producer, plus the SG&A expenses of the Hong Kong parent and its related trading subsidiary for the product in question. As for a profit is concerned, it was judged reasonable to use the profit reported in the Group's consolidated accounts, since the group is active in the field of manufacturing and trading of magnetic media products.

(b) *Export price*

- (16) All sales were made at transfer prices to the Hong Kong parent company, which in turn sold the goods, through its related trading subsidiary, to independent customers in the Community. Therefore, it was found that the export price should be established by reference to the prices actually paid or payable to the related trading company in Hong Kong.

(c) *Comparison*

- (17) For the purposes of ensuring fair comparison, at ex-Indonesian factory level, between the constructed export price and the constructed normal value, adjustments were made in respect of freight and insurance, credit costs and commissions in accordance with points (e), (g) and (i) of Article 2(10) of the Basic Regulation. As stated at recital 14, because of the relationship between the Indonesian producer and the related trading subsidiary in Hong Kong, the prices charged by the producing company to the related trading subsidiary, through its parent company, are not reliable. To establish a reliable export price to the Community from Indonesia, the price charged from Hong Kong to the Community was adjusted to an ex-Indonesia level.

As the related trader's functions can be considered similar to those of a trader acting on a commission basis, an adjustment of 6 %, based on a reasonable amount for SG&A expenses and profit, was deducted from the prices charged by the related trading subsidiary to independent customers in the Community. This figure was considered reasonable given the degree of the related trader's involvement in the selling activities of the exporter.

(d) *Dumping margin*

- (18) The weighted average normal value was compared with the weighted average export price. The provisional dumping margin for the Indonesian producer, expressed as a percentage of the total cif Community-frontier value of imports, was 41,1 %.
- (19) To cover the contingency that there might be another Indonesian producer/exporter, which had failed to reply to the Commission's questionnaire, a residual dumping margin was determined on the basis of the facts available in accordance with Article 18(1) of the Basic Regulation. This was done in order not to reward non-cooperation and to avoid any opportunity for circumvention. When the figures for exports to the Community provided by the cooperating Indonesian producer were compared with Community import statistics, it was apparent that there was a very high degree of cooperation. The Commission therefore considered that the most reasonable facts available were those established in the investigation and that, since there was no reason to believe that any non-cooperating producer/exporter would have dumped at a lower level than the level found for the cooperating producer, the residual margin should be set at the same level, that is 41,1 %.

D. COMMUNITY INDUSTRY

- (20) Information was sought from all known producers of the product concerned in the Community. The Commission also took into consideration, as it had done in the prior proceedings, the fact that some of the producers in the Community were related to producers in the countries concerned by those prior proceedings, which were found to be dumping and thereby causing material injury.
- (21) As in the prior proceedings, the Commission found that the assessment of the effects of the dumped imports originating in Indonesia would be distorted if Community producers related to those producers from countries involved in prior proceedings found to be dumped the like product, and causing material injury to the complainant, were not excluded from the definition of the 'Community industry'.
- (22) On the basis of the approach outlined above, the share of the total Community production held by the complainant producers during the investigation period amounted to at least 85 %. Consequently, the complainant (Diskma) represented a major proportion of total Community production of the product concerned.

E. INJURY

Preliminary remark

(23) It has to be noted that the Council has already found that the Community industry was suffering material injury from the effects of dumped imports from Japan, Taiwan, the People's Republic of China, Hong Kong, the Republic of Korea, Malaysia, Mexico and the USA. In the present proceeding, the Commission examined whether the dumped imports of the product concerned from Indonesia also contributed to the material injury to the Community industry.

(24) The Commission's examination covered the existing Community of 15 Member States.

1. *Community consumption, volume and market share of the dumped imports*

(25) The Commission has relied on the methodology adopted in the prior proceedings, with an adjustment to take account of consumption in Austria, Finland and Sweden during the period under consideration.

(26) On this basis, Community consumption was 819 million units in 1992, 1 095 million units in 1993, 1 400 million units in 1994, and 1 413 million units in the investigation period, that is an increase of 73 % between 1992 and the investigation period.

(27) Imports from Indonesia went up from 0,19 million units in 1992 to 91,5 million units during the investigation period, an increase by a factor of 480 over the period. As imports from Indonesia grew, their market share, assessed in the light of Community consumption, rose from 0,02 % in 1992, to 1,56 % in 1993, 6,04 % in 1994, and 6,48 % in the investigation period.

2. *Prices of the dumped imports*

(28) For the sole cooperating producer in Indonesia, price undercutting was established by comparing its sales prices to the first independent customer in the Community, adjusted in respect of import duties paid and post-importation costs, with the weighted average ex-factory prices of the Community industry. The comparison was made separately for each of the product types imported (that is high-density bulk/packed, double-density bulk).

(29) The comparison showed, on a weighted average basis, a price undercutting margin of 26,1 % for the cooperating producer.

3. *Situation of the Community industry*(a) *Production and capacity utilisation*

(30) The volume of production of the product concerned by the Community industry increased from 105 million units in 1992, to 175 million in 1993, 243 million in 1994 and 246 million in the investigation period, an absolute increase of 134 % over the period considered. Average capacity utilisation rates were 80 % in 1992, 85 % in 1993, 94 % in 94, and 93 % in the investigation period, close to the effective maximum.

(b) *Sales and market share*

(31) The Community industry's sales on the Community market grew from 97 million units in 1992, to 158 million in 1993, 219 million in 1994 and 232 million in the investigation period. In terms of market share, this was 11,8 % in 1992, 14,4 % in 1993, 15,6 % in 1994, and 16,5 % in the investigation period. This increase in market share has to be seen in the light of the previously imposed anti-dumping measures from which the Community industry has benefited. This was particularly the case with respect to imports from Japan, Taiwan, China and Hong Kong. Imports from these countries represented a market share of 44,3 % in 1992, but had fallen to 7,5 % in the investigation period. Due to the pressure of dumped imports concerned by the present proceeding, however, the Community industry was obliged to reduce prices to achieve this growth in market share, particularly in the bulk diskette segment.

(c) *Prices and profitability*

(32) Although the Community industry's unit costs fell by 34 %, from ECU 0,488 to ECU 0,324 between 1992 and the investigation period, selling prices fell by 37 %, from ECU 0,504 to ECU 0,318, over the same period. Profitability overall, as a consequence, deteriorated from a positive 3,2 % on sales in 1992 to losses of 1,9 % in the investigation period.

(d) *Conclusion on injury*

(33) In the light of preceding analysis, the Commission provisionally concludes that the Commission industry is suffering material injury.

(34) Overall, the situation remains essentially the same as in the prior proceedings. Production, sales and capacity utilisation showed positive development, due in large measure to the expansion of the market. However, the benefit of these positive

factors has been offset by the low levels of prices, which remained well below the levels required for the generation of the profits to finance the investments needed to allow the Community industry to keep place with the swiftly changing conditions evident in the area of information technology. Indeed, despite the expansion of the market, the Community industry's prices fell by 37 % over the period examined, resulting in a considerably worsened financial situation.

- (35) Finally, it should be noted that the evaluation of the above factors, including the Community industry's increased market shares, has to be seen in the light of the fact that, during the period examined, the Community industry was still suffering from the effects of past dumping, as established in the prior proceedings.

F. CAUSATION OF INJURY

- (36) The Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports from Indonesia, and whether other factors may have caused or contributed to that injury.

1. Effects of the dumped imports from Indonesia

- (37) Both the volumes and market shares of the dumped imports grew at rates far in excess of the growth of Community consumption. In index terms, consumption grew from 100 in 1992 to 173 in the investigation period; corresponding figures for the volumes of dumped imports were 100 and 48 700, and for the market shares represented by these, 100 and 32 400. Given the standardized nature of the product, and the transparency of the market, the sales of dumped imports at prices that undercut those of the Community industry by substantial margins could not have failed to have negative consequences for the Community industry, which had to align its prices downwards in an attempt to resist the pressure from the dumped imports, and to capture a viable share of the Community market with levels of production allowing the economic employment of resources. The resulting depression of prices led to the losses referred to above. Indeed, the Community industry became loss-making at the same time as Indonesian imports reached their present significant market share of more than 6 %.

2. Effects of other factors

- (38) It should be recalled (see recital 7) that the Council has already determined that imports of the like product from Japan, Taiwan, the People's Republic of China, Hong Kong, the Republic of Korea,

Malaysia, Mexico and the USA were being dumped and causing material injury to the Community industry. As the investigation period in the preceding investigation concerning Malaysia, Mexico and the USA (1 August 1993 to 31 July 1994) overlapped that in the present proceeding by five months, it is clear that imports from the three countries in question were also a cause of the injury suffered by the Community industry in the period examined in the present investigation. Nevertheless, the dumped imports, from Indonesia, which entered the Community market in increasing quantities at low dumped prices between 1992 and the end of the investigation period, had a significant impact. These imports were all the more injurious for an industry which, since 1990, had already been weakened by, and was continuously suffering injury from, dumped imports addressed by the prior proceedings mentioned above.

- (39) Imports from countries other than Indonesia and those subject to measures remained stable between 1992 and 1995, at between 5 and 6 % of Community consumption. No conclusions as to the possibility of injurious dumping arising from these imports can be drawn from the information available to the Commission at the provisional stage of the proceeding.

- (40) Consequently, even if imports originating in countries other than Indonesia, including those subject to prior proceedings, had caused injury to the Community industry, this would not alter the fact that the injury caused by the dumped imports originating in Indonesia, viewed in isolation, is material.

3. Conclusion

- (41) In these circumstances, therefore, the Commission concludes, for the purpose of provisional findings, that, notwithstanding the injury found to have been caused by dumped imports from Japan, Taiwan, the People's Republic of China, Hong Kong, the Republic of Korea, Malaysia, Mexico and the United States, the dumped imports from Indonesia, because of their low prices, their growing share of the Community market between 1992 and the end of the investigation period, and the resulting deterioration in the financial situation of the Community industry during the same period, have, in isolation, caused material injury to this industry.

G. COMMUNITY INTEREST

1. General consideration

- (42) It should be borne in mind that, in prior proceedings (see recital 7), the Council determined that it was in the interest of the Community to impose measures in respect of dumped imports of the product concerned. Further, given the overlap between the investigation period in this proceeding and in the immediately preceding investigation, a new, full enquiry into the Community interest in this case was unwarranted. Moreover, as in the previous proceedings, no information was submitted by users of the product concerned or other interested parties. Nevertheless, on the basis of the information available, the Commission considered the likely impact of measures, or the absence thereof, on the Community industry and on other economic operators in the sector involving the product concerned.

2. Consequences for the Community industry

- (43) In 1992, the Community industry consisted of four small or medium-sized enterprises. Production is capital-intensive, rather than labour-intensive, and the companies concerned were capable of responding flexibly to the demands of a growing Community market. Since 1990, however, growing competition from dumped imports from various sources has continually created difficulties for Community producers, who have had to repeatedly avail themselves of the Community anti-dumping instrument.
- (44) As the product has matured, however, two Community producers restructured their investment and have ceased production of 3,5" microdisks in the Community, thus leaving two companies active in the production and sales of the product concerned. The remaining producers are viable, as is evidenced by the fact that between 1994 and 1995, production increased from 242 to 281 million units, and unit costs fell by about 10%. The Community industry is capable of efficiently supplying the market for a product which, although at a mature stage in its life-cycle, forms the basic storage medium for a large number of computer users.
- (45) The imposition of measures would remove the pressures on the Community market arising from the dumped imports under investigation. This would allow the Community industry to increase prices to the extent that a reasonable level of operating profit could be achieved, thus enabling it to

maintain its presence in an important and rapidly-developing area of technological significance. If measures are not imposed, however, the remaining producers may be forced to cease production because of a lack of profitability.

3. Consequences for the supplier industry

- (46) Given the output of the Community industry at over 280 million diskettes in 1995, and its 16,5% share of the Community market, the industry's disappearance would have damaging consequences for component suppliers. Anti-dumping measures would, therefore, be in their interest.

4. Consequences for users and consumers

- (47) As to the interests of users of 3,5" microdisks, and in particular the software industry, any price advantages in the short term have to be seen against the longer term effects of failing to restore effective competition. Indeed, as stated above, to refrain from acting would seriously threaten the viability of the Community industry, the disappearance of which would, in fact, reduce supply and competition, to the detriment of consumers, including the software houses.
- (48) Furthermore, the overall downstream price effect of the duty proposed, taking into account Indonesia's market share, and reasonable assumptions on market price elasticities, could be a maximum price increase of less than 2% at the retail level. It is considered unlikely, however, that prices will rise even to this extent as 75% of imports from Indonesia are bulk diskettes. These are a commodity product, used largely for duplication, where they account for a negligible proportion of costs, and it is therefore by no means certain that a duty-induced increase will fully be passed on to consumers. This expectation is supported by the existence of a certain degree of production overcapacity on a global level that limits somewhat the possibilities of price increases; it is further reinforced by the standardised nature of the product, the transparency of the market and the effects noted after the imposition of the previous measures.

5. Effective competition and trade distorting effects

- (49) In assessing the Community interest, special consideration has to be given to the need to eliminate the trade-distorting effects of injurious dumping and to restore effective competition.

Anti-dumping measures only remove the injurious effects of dumping and are not, consequently, an obstacle to supply from third countries at fair prices. It is only the unfair element in the exporters' price advantage that is eliminated. In these circumstances, imports would still complete on the basis of their true competitive advantage, and exporters' access to the Community market would be unlikely to diminish.

6. Conclusions

(50) After consideration of the various interests involved, it is provisionally found that the adoption of measures in the present proceeding will re-establish fair competition by eliminating the injurious effects of Indonesian dumping practices, and will offer the Community industry the opportunity to maintain and develop its activities in the very important sector of data storage and transmission. In addition, the market for the component supply industry in the Community will be maintained.

(51) Further, in the light of the Council's findings in the previous proceedings, the Community interest requires that, in order to prevent the effects of the measures already taken from being undermined, and to avoid discriminating against countries found to have been dumping and causing injury protective measures be introduced with regard to imports of the dumped 3,5" microdisks subject to this proceeding.

It is, therefore, in the Community interest to adopt anti-dumping measures with regard to the dumped imports originating in Indonesia.

H. DUTY

(52) The Commission considers that the measures should take the form of provisional *ad valorem* duties. For the purpose of establishing the level of the provisional duties, the Commission took account of the dumping margins found and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

(53) Since the injury consists principally of depression of prices, lack of profitability or losses, the removal of such injury requires that the industry should be able to increase prices to non-injurious levels without loss of sales volume.

(54) For calculating the necessary price increase, the Commission considered that the actual prices of these imports had to be compared to selling prices that reflect the costs of production of the complainant Community producers, plus a reasonable amount of profit.

(55) To that end, and as in prior proceedings concerning microdisks, the Commission has used the representative production costs of the complainant industry, together with the amount of profit used in the previous proceeding (12 % on turnover), this being the margin which is considered necessary to ensure the viability of the Community industry and which the industry could be expected to attain in the absence of dumped imports.

(56) The resulting prices based on these costs and profits were compared with the prices of the dumped imports used to establish undercutting, as outlined in recital 28.

(57) The differences between these prices established on a weighted average basis and expressed as a percentage of the free-at-Community-frontier price were above the dumping margins established for the cooperating producer in Indonesia. It is therefore proposed that provisional anti-dumping duties should be set at the level of the dumping margins established in the investigation.

(58) In the interests of sound administration, a period should be fixed within which the parties concerned may make their views known and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of 3,5" microdisks used to record and store encoded digital computer information, falling within CN code ex 8523 20 90 (TARIC additional code 8523 20 90 10), and originating in Indonesia.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, shall be 41,1 %.

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

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

The anti-dumping proceeding is hereby terminated as far as imports of 3,5" microdisks which contain data or instructions (other than sound or images) of a kind used in automatic data-processing machines, falling within CN code ex 8524 91 10, are concerned.

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

Done at Brussels, 3 March 1998.

Article 3

Without prejudice to Article 20 of Regulation (EC) No 384/96 and pursuant to Article 21 thereof, the parties concerned may make their views known in writing and apply to be heard orally by the Commission within one month of the entry into force of this Regulation.

Article 4

Subject to Articles 7, 9, 10 and 14 of Regulation (EC) No 384/96, Article 1 of this Regulation shall apply for a period of six months unless the Council adopts definitive measures before the expiry of that period.

Article 5

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

For the Commission

Leon BRITTAN

Vice-President
