

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EEC) No 3433/91**  
of 25 November 1991

**imposing a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in Japan, the People's Republic of China, the Republic of Korea and Thailand and definitively collecting the provisional anti-dumping duty**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community<sup>(1)</sup>, and in particular Article 12 thereof,

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

Whereas :

**A. PROVISIONAL MEASURES**

- (1) The Commission, by Regulation (EEC) No 1386/91<sup>(2)</sup>, imposed a provisional anti-dumping duty on imports into the Community of gas-fuelled, non-refillable pocket flint lighters (hereinafter referred to as lighters) originating in Japan, the People's Republic of China, the Republic of Korea and Thailand and falling within CN code ex 9613 10 00 (Taric code : 9613 10 00\*10). The Council, by Regulation (EEC) No 2832/91<sup>(3)</sup>, extended this duty for a period not exceeding two months.

**B. SUBSEQUENT PROCEDURE**

- (2) Following the imposition of the provisional anti-dumping duty, the interested parties who so requested were granted an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.

- (3) Parties were informed in writing of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.
- (4) The oral and written comments submitted by the parties were considered and, where appropriate, the Commission findings were modified to take account of them.

**C. PRODUCT**

- (5) A number of exporters and one importer repeated the arguments put forward in the administrative procedure before the provisional measures, namely that the Community producers' lighters and the imported lighters are not like products, since certain of the Community models produce more ignitions.

The Council, however, confirms the Commission's conclusions on this point, outlined in recital 13 of Regulation (EEC) No 1386/91, on which no new evidence was submitted.

The Council, therefore, confirms that the lighters produced and sold by the Community manufacturers, form one single category of product and constitute a product alike in all respects to the product imported from Japan, the People's Republic of China, the Republic of Korea and Thailand within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

**D. DUMPING**

- (6) The Thai producer and exporter, Thai Merry Co. Ltd, provided fresh evidence concerning the depreciation amount used by the Commission for the

<sup>(1)</sup> OJ No L 209, 2. 8. 1988, p. 1.

<sup>(2)</sup> OJ No L 133, 28. 5. 1991, p. 20.

<sup>(3)</sup> OJ No L 272, 28. 9. 1991, p. 1.

preliminary determination of normal value. In view of this evidence a new dumping calculation concerning Thai Merry Co. Ltd has been made. Consequently, the dumping margin as a percentage of cif value, with regard to that undertaking, has been modified to 14,14 %.

(7) Given the fact that Thailand has been used as the analogue country for calculating normal value for China, the dumping margin for the People's Republic of China also required to be modified and is now 16,94 %.

(8) A Chinese exporter, Gladstrong Investments Ltd, which did not export to the Community during the reference period requested to be excluded from the application of the duty. Since the Commission was not in a position to make a determination with regard to this exporter, this request could not be accepted by the Council. Nevertheless, the Council notes that the Commission is ready to initiate without delay a review whenever the exporting undertaking can show to the Commission, and supply to that effect sufficient evidence, that it did not export during the investigation period, it started exporting or has the intention to export to the Community after the investigation period and that it is not related to or associated with any of the companies subject to the present investigation for which dumping was found.

(9) With regard to Dong Guan Tian Bao Lighter Factory, another Chinese exporter, who submitted a reply to the questionnaire, which was, in any case, incomplete, more than six months after the deadline specified in the questionnaire sent by the Commission services, it is considered that the dumping margin established for the People's Republic of China should apply.

(10) Gao Yao Co. submitted that the anti-dumping duties imposed on imports made by Gao Yao Co. should be cancelled and the normal value applicable to Gao Yao Co. calculated pursuant to Article 2 (6) and not Article 2 (5) of Regulation (EEC) No 2423/88.

It was argued that Article 2 (5) should not be applied since imports to the Community were not made from the People's Republic of China but from Hong Kong and that Gao Yao Co. (Hong Kong) should be considered as an exporter and not Gao Yao Co. (China).

The Council, however, confirms that in this case the products concerned were merely transhipped through Hong Kong and therefore the normal

value should be determined in accordance with Article 2 (5) of Regulation (EEC) No 2423/88.

(11) The exporters from Thailand argued that the profit margin of 8 %, added to the cost of production for the determination of the normal value, was too high. All domestic sales of Thai Merry Co. Ltd, were found to have been made at a loss, the domestic sales of Politop Co. Ltd were not considered representative and there were no other producers or exporters in Thailand in the same business sector. Therefore, the Commission established a profit margin of 8 % on the basis of the profit realized by other exporters from those countries which cooperated in this procedure.

(12) In the light of the above, the Council confirms the conclusions set out in recitals 19 to 29 of Regulation (EEC) No 1386/91 taking into account the corrections mentioned above with regard to Thai Merry Co. Ltd and the consequent impact on the margin established for the People's Republic of China.

The definitive weighted average margins expressed as a percentage of cif value for each of the exporters concerned are as follows:

*Japan*

Tokai Corporation, Yokohama 96,56 %,

*People's Republic of China* 16,94 %,

*Republic of Korea*

Samji Industrial, Inchon 31,58 %,

*Thailand*

Politop Co. Ltd, Bangkok 5,87 %,

Thai Merry Co. Ltd, Samutsakorn 14,14 %.

**E. CAUSAL LINK BETWEEN INJURY AND DUMPING**

(13) A certain number of exporters raised again the issue of price comparison of lighters at the resale level of the first independent buyer in the Community. It was argued that certain imported lighters contained less gas, produced less flame and, therefore, had a different appeal to customers than those produced by the Community producers.

Recital 34 of Regulation (EEC) No 1386/91 clearly indicates that the Commission excluded from the price undercutting exercise a number of lighters by taking into account only lighters with a similar gas content. The Council, therefore, confirms the Commission findings with regard to price undercutting.

- (14) No new evidence concerning injury was presented by any party. Consequently, the Council confirms the Commission conclusions on injury as set out in Regulation (EEC) No 1386/91.
- (15) In recitals 44 to 50 of Regulation (EEC) No 1386/91, the Commission concluded that the cumulated dumped imports from Japan, the People's Republic of China, the Republic of Korea and Thailand had caused material injury to the Community industry.

The Commission found that the rapid increase of Japanese, Chinese, Korean and Thai low-priced lighters coincided with an equally rapid decrease of production, capacity utilization, sales volume, market share, prices, profits and employment of the Community industry.

No new facts or new arguments concerning these findings were submitted to the Commission after the publication of Regulation (EEC) No 1386/91. The Council therefore confirms the conclusions of the Commission as set out in recitals 44 to 50 of that Regulation.

#### F. INJURY THRESHOLD

- (16) With regard to the calculation to determine the injury elimination level, the Commission considered it appropriate that the difference between actual selling prices of the exporters and a price which would allow the Community industry to achieve 15 % profit should be eliminated.

This 15 % profit margin has been contested by the Japanese producer and exporter as being too high.

- (17) According to the Community producers, a 15 % profit margin is the minimum necessary to finance new investments in manufacturing facilities and research and development, without which the deterioration of the situation of the industry would be bound to be exacerbated and the injury caused by dumping would not be entirely removed.

Consideration was given to the fact that the profit achieved by the major world producers has always ranged between 12 and 20 %.

In the light of the above, the Council confirms Commission findings with regard to the injury threshold as established in recital 59 of Regulation (EEC) No 1386/91.

#### G. COMMUNITY INTEREST

- (18) The Japanese exporter suggested that there was a danger of Japanese imports being replaced by low-priced imports from other non-Community countries either from those involved in this procedure or others if a high anti-dumping duty was imposed against Japan.
- (19) The Council is not persuaded that the duties proposed would lead to Japanese imports being replaced by low-priced imports from other third countries and considers that even if it were to happen it would not be contrary to the Community's interest. As the Council has already stated in previous Regulations, anti-dumping duties should neither have a protectionist effect for the Community industry nor cause any undue handicap for the exporters.
- They are designed to re-establish fair and open market conditions by protecting the Community industry against an unfair trading practice. If some exporters' position on the market suffers after the imposition of anti-dumping duties, then this is only the consequence of their inability to face a fair competitive market situation.
- (20) The Council confirms the Commission findings set out in section G. of Regulation (EEC) No 1386/91 and considers that it is in the Community interest to impose anti-dumping measures to eliminate the injurious effects of dumped imports originating in Japan, the People's Republic of China, the Republic of Korea and Thailand.

#### H. DUTY

- (21) On the basis of calculations of dumping and injury threshold described in Regulation (EEC) No 1386/91 and the submissions subsequently received, the Council concludes that duties should be imposed at the level of the actual dumping found for the People's Republic of China and Thailand (firms Thai Merry Co. Ltd and Politop Co. Ltd) and for Japan (Tokai Corporation) and the Republic of Korea (Samji Industrial) on the basis of the injury threshold established.

The duties, therefore, shall be :

— Tokai Corporation, Japan	35,7 %
— Samji Industrial, Republic of Korea	22,7 %
— Gao Yao Co., People's Republic of China	16,9 %
— Thai Merry Co. Ltd, Thailand	14,1 %
— Politop Co. Ltd, Thailand	5,8 %

- (22) The Council confirms, for the reasons stated by the Commission in recital 60 of Regulation (EEC) No 1386/91, that the highest duty established for each country should be applied to firms which did not respond to the Commission questionnaire or otherwise did not make themselves known to the Commission.

### I. UNDERTAKING

- (23) One of the two Thai exporters, Thai Merry Co. Ltd, has offered an undertaking which is considered acceptable. The undertaking will increase the price of the products in question to a level sufficient to eliminate the dumping established by the Commission.

Following consultations during which one Member State raised objections to this solution, the undertaking was accepted by Commission Decision 91/604/EEC<sup>(1)</sup>.

### J. COLLECTION OF THE PROVISIONAL DUTIES

- (24) The Thai exporter, Thai Merry Co. Ltd, requested that lighter imports already dispatched before the date that provisional measures came into effect and customs cleared after that date be released free of collection of provisional duties and consequently that the provisional duty should not be definitively collected in such cases.
- (25) In accordance with Article 2 (1) and Article 11 (1) of Regulation (EEC) No 2423/88, anti-dumping duties are applied to the products concerned at the moment they enter into free circulation in the Community. Contrary to Council Regulation (EEC) No 288/82 of 5 February 1982 on common rules for imports<sup>(2)</sup>, to which the exporter refers, Regulation (EEC) No 2423/88, which is applicable to products imported under conditions of unfair competition, does not provide for any exceptions to this rule. Moreover, it should be recalled that the Commission made considerable efforts to keep the parties concerned informed and thus the importers cannot reasonably claim to have been unaware of the proceedings or of the stage to which the investigation had progressed during the period between

the initiation of the proceedings and the imposition of the provisional duty.

- (26) Therefore, in view of the size of the established dumping margins and of the serious nature of the injury caused to the Community industry, the Council considers it necessary that the amounts secured by way of the provisional anti-dumping duty should be collected definitively to the extent of the amount of the definitive duty imposed,

HAS ADOPTED THIS REGULATION :

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of gas-fuelled, non-refillable pocket flint lighters falling within CN code ex 9613 10 00 (Taric code 9613 10 00\*10) originating in Japan, the People's Republic of China, the Republic of Korea and Thailand.
2. The rate of the duty, applicable to the net, free-at-Community-frontier price before duty, shall be set as follows :
  - (a) 35,7 % for the products originating in Japan ;
  - (b) 16,9 % for the products originating in the People's Republic of China ;
  - (c) 22,7 % for the products originating in the Republic of Korea ;
  - (d) 14,1 % for the products originating in Thailand (Taric additional code 8543) with the exception of imports which are produced and sold for export to the Community by Politop Co. Ltd, Bangkok where the rate shall be 5,8 % (Taric additional code 8544).
3. The duty referred to in paragraph 2 (d) shall not apply to gas-fuelled, non-refillable pocket flint lighters exported to the Community by Thai Merry Co. Ltd (Taric additional code 8542).
4. The provisions in force concerning customs duties shall apply.

#### Article 2

The amounts secured by way of the provisional anti-dumping duty imposed pursuant to Regulation (EEC) No 1386/91 shall be definitively collected at the duty rate definitively imposed.

#### Article 3

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

<sup>(1)</sup> See page 31 of this Official Journal.

<sup>(2)</sup> OJ No L 35, 9. 2. 1982, p. 1. Regulation as last amended by Regulation (EEC) No 2978/91 (OJ No L 284, 12. 10. 1991, p. 1).

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

Done at Brussels, 25 November 1991.

*For the Council*

*The President*

J. M. M. RITZEN

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