

**COUNCIL REGULATION (EC) No 3664/93  
of 22 December 1993**

**imposing a definitive anti-dumping duty on imports into the Community of photo albums in bookbound form originating in the People's Republic of China and collecting definitively the provisional anti-dumping duty**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European 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 presented by the Commission after consultation within the Advisory Committee as provided for by the above Regulation,

Whereas :

**A. Provisional measures**

- (1) By Regulation (EEC) No 2477/93<sup>(2)</sup>, the Commission imposed a provisional anti-dumping duty on imports into the Community of photo albums in bookbound form originating in the People's Republic of China and falling within CN code ex 4820 50 00.

**B. Subsequent procedure**

- (2) Following the imposition of the provisional anti-dumping duty the following parties submitted comments in writing :

Exporter of bookbound photo albums originating in the People's Republic of China.

— Climax Paper Converters Ltd, Hong Kong.

Community producers :

Germany :

— Walter Aulfes, München.

— Ludwig Fleischmann GmbH & Co. KG, Fulda.

— Karl Walter GmbH & Co. KG, Nettetal.

— Holson GmbH, Alsdorf.

Netherlands :

— Henzo BV, Roermond.

Independent importer :

— WAHA, Gebrauchsgüter import Handelsgesellschaft mbH, Germany.

- (3) Parties who so requested were granted an opportunity to be heard by the Commission. The parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures and the definitive collection of amounts secured by way of provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.
- (4) The parties' comments were considered, and, where appropriate, the Commission's findings were modified to take account of them.
- (5) The investigation exceeded the normal duration of one year provided for in Article 7 (9) (a) of Regulation (EEC) No 2423/88 due to the time expended in finding an appropriate reference country for the establishment of normal value.

**C. Product under investigation and like product**

- (6) As no new arguments have been presented regarding the product under consideration and the like product, the Council confirms the findings of the Commission as set out in recitals 7 to 10 of the provisional Regulation.

**D. Community industry**

- (7) No arguments have been presented regarding the Community industry. The Council therefore, confirms the findings of the Commission as set out in recital 26 of the provisional Regulation.

**E. Individual treatment**

- (8) In recitals 13 to 18 of Regulation (EEC) No 2477/93, the Commission outlined the general and specific reasons why it was not appropriate to grant individual treatment in this case.

Climax Paper Converters Ltd, (hereinafter Climax), the Hong Kong based exporter of Chinese bookbound photo albums, contested the Commission's decision not to grant individual treatment to its exports on the basis of its dumping margin. The exporter stressed that it is a profit oriented company, based in Hong Kong and operating under open market principles. The manufacturing operation in the People's Republic of China, it

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

<sup>(2)</sup> OJ No L 228, 9. 9. 1993, p. 16.

alleged, is governed by these same market principles. The exporter further alleged that as it was the sole cooperating exporter it was doubly penalized since it suffered the impact of the dumping margin calculated for non-cooperating exporters.

- (9) In its preliminary determination the Commission outlined in detail at recital 18 the specific reasons why Climax was not entitled to individual treatment. Since then no new arguments have been put forward establishing that Climax is free to act autonomously in its business decisions in the People's Republic of China. The exclusion of individual treatment and consequently the establishment of a single dumping margin has an impact on the cooperating exporter. However no other solution is practicable since the overriding consideration must remain that all exports from countries referred to in Article 2 (5) of the Basic Regulation must be subject to a single country-wide duty for the reasons set out in recitals 13 to 17 of the provisional Regulation and since, in the present case, it is not established that Climax is free to act independently from the State in the conduct of its business affairs.

The Commission has, therefore, come to the conclusion that it is appropriate in this case to establish a single anti-dumping duty for all exports of the product under consideration from the People's Republic of China.

The Council confirms this conclusion.

## F. Dumping

### 1. Normal value

- (10) In the provisional duty determination the Commission concluded that South Korea was an appropriate analogue country for the establishment of the normal value of Chinese exports to the Community and normal value was consequently established on the basis of Article 2 (5) (b) of the Basic Regulation, i.e. the constructed value of the like product in a market economy country, South Korea.
- (11) The complainant Community producers argued that South Korea was not an appropriate and reasonable reference country for the determination of the normal value and reiterated that the normal value should have been established under Article 2 (5) (c) of the Basic Regulation on the basis of prices payable in the Community for the like product. It

was contended that, although a comparable product is manufactured in South Korea, the existence of anti-dumping measures against South Korean producers established by Commission Decision No 90/241/EEC<sup>(1)</sup> may have influenced the competitive situation of South Korean exporters and affected the level of selling, general and administrative expenses and profit margin obtaining in the South Korean market.

- (12) The Commission rejected this argument since all of the elements on which the normal value was based as set out in recitals 21 and 22 of the provisional Regulation were subject to normal market forces and there is no reason to consider that they were affected by existing anti-dumping measures i.e. price undertakings. Moreover reference to Article 2 (5) (c) is only appropriate if either domestic prices or constructed value does not provide an adequate basis. Since such a basis was found this excludes the application of Article 2 (5) (c).

The Council confirms this approach.

### 2. Export price

- (13) Climax contested the methodology used to establish the export price of bookbound photo albums from the People's Republic of China. It argued that the 5 % profit margin deducted from the Hong Kong export price, estimated by the Commission to be a normal profit realized on sales of photo albums of Chinese origin occurring via Hong Kong, was excessive. It alleged that a 1 % or 2 % profit margin was more appropriate for the transshipment of goods from the People's Republic of China to Hong Kong Harbour.
- (14) The Commission rejected the exporter's argument since the resale of bookbound albums in Hong Kong is an extensive commercial operation requiring an appropriate infrastructure. Therefore a profit margin of 5 % is considered reasonable to remunerate the effort involved and therefore an appropriate deduction in order to determine the export price ex-China.
- (15) The Commission set out, in recital 23 of the provisional Regulation, the methodology used to determine the export prices of the remaining exports where no information was available. These export prices were determined on the basis of the facts available, in accordance with Article 7 (7) of the Basic Regulation.

<sup>(1)</sup> OJ No L 138, 31. 5. 1990, p. 48.

- (16) Climax contested the methodology used to determine these prices and argued that, since the Eurostatistics for CN code 4820 50 00 embrace other types of albums, the Commission's estimate of the volume of bookbound albums imported under this CN code was arbitrary.
- (17) In estimating the volume of bookbound albums imported under CN code 4820 50 00 the Commission knew the precise volume of bookbound albums exported by Climax and thus ascertained the volume of albums of whatever type, which made up the balance imported under the CN code. It was conservatively estimated that 50 % of the remaining balance under the CN code were bookbound photo albums since it was alleged that several manufacturers of bookbound albums in Hong Kong relocated their production to the People's Republic of China during 1989 or 1990. Since publication of the provisional findings it has been confirmed by an importer that, indeed, three manufacturers relocated and commenced production in the People's Republic of China which confirms that the attribution of 50 % of the balance to bookbound photo albums was a conservative estimate. Furthermore, as Climax is apparently the main exporter of this product to the Community, the attribution of 50 % of the balance under the CN code to other bookbound album exporters remains the most reasonable and accurate approach.
- (18) Climax also argued that the export prices of the non-cooperating producers should have been established on a model by model basis.
- (19) In establishing the export prices of the non-cooperating producers, the Commission took account of the sub-categories of bookbound photo albums sold by Climax. The two elements which delineate a sub-category are the size of the inner sheet and outer cover and the number of sheets contained in the albums. Indeed, these criteria are used by Climax to identify their albums and are the key factors used to compare albums of different producers.
- (20) Models within a sub-category are merely variations arising due to the colour of the outside cover, the design of the outside cover or other incidental features peculiar to an individual producer.
- (21) In determining export prices for the non-cooperating producers the objective was to base these prices on the lowest prices at which Climax sold bookbound albums within a sub-category always ensuring that sales within the sub-category concerned could be considered representative. While the Commission rejected the argument that

prices should have been established on a model by model basis, it reconsidered the representativeness of the sub-categories included in the exercise. In order to ensure that models were included from as many sub-categories as possible, further export transactions have been included thus ensuring that all sub-categories where sales exceeded 5 % of total sales and which were, therefore, sufficiently representative, were included in the sample.

The Council confirms this approach.

### 3. Comparison

- (22) As far as recital 24 of Regulation (EEC) No 2477/93 is concerned, no evidence was received to alter the Commission's provisional conclusion.

The Council therefore confirms the conclusion.

### 4. Dumping margin

- (23) No further arguments were adduced on the methodology used by the Commission in its preliminary determination of a single dumping margin for all Chinese exports. Therefore one dumping margin has been established for the People's Republic of China on the basis of a weighted average of the dumping margin for which information was available and the dumping margin determined on the basis of the facts available in accordance with Article 7 (7) (b) of the Basic Regulation (see recital 15) for the remaining exports for which no information was received.

On the basis of the modification made to the determination of export prices for the non-cooperating producers, the dumping margin for exports from the People's Republic of China has been established on a weighted average basis at 18,6 %.

The Council confirms the conclusion.

## G. Injury

### 1. Total consumption, volume and market shares of dumped imports.

- (24) All figures are confirmed except the data relating to Community consumption. During the preliminary investigation, it was estimated that 30 % of the volume of albums exported by Indonesian producers were of the bookbound category. However, it was subsequently established that Indonesian exports of albums are mainly of the spiral and pocket type category and that bookbound exports are negligible. Therefore the data on Indonesian bookbound albums was overestimated and consequently Community consumption considered to be in the order of 15 500 tonnes during the investigation period.

## 2. Prices of dumped imports.

- (25) In recital 10 of Regulation (EEC) No 2477/93 it was acknowledged that there were some physical differences between the imported product and Community production. A 10 % adjustment was estimated to be appropriate to account for such differences and was taken into account in establishing the price undercutting margin referred to in recital 29 of the provisional Regulation.
- (26) The Community industry challenged the 10 % adjustment granted for apparent differences of the imported product *vis-à-vis* Community production in the determination of the undercutting margin. It argued that a 5 % reduction in price was more reasonable to account for material differences.
- (27) The Commission has considered this argument but finds no reason to deviate from the original figure based on a visual comparison of export models and Community production.

## 3. State of the Community industry

- (28) No new arguments were put forward on the state of the Community industry. The Council therefore confirms the findings of the Commission as set out in recitals 30 to 35 of the provisional Regulation.

## 4. Conclusion as to injury

- (29) Climax requested that its original submission on injury made prior to the adoption of provisional measures be again considered before a definitive determination was made.

The Commission re-examined the exporter's submission but found that it had already replied in full to the arguments put forward therein and since there were no fresh grounds to modify the provisional determination confirms that the Community industry suffered material injury.

The Council confirms this conclusion.

## H. Cause of injury

### (a) Effect of dumped imports

- (30) The Commission has, in its preliminary conclusions, set out in detail the effect of the dumped imports on the Community industry (recitals 37 and 38 of Regulation (EEC) No 2477/93). No new arguments were put forward in this connection and, accordingly the Council confirms these conclusions.

### (b) Other factors.

- (31) As far as recitals 39 to 40 of Regulation (EEC) No 2477/93 are concerned no new evidence was received to change the Commission's provisional findings. The Council consequently confirms these findings.

## I. Community interest

- (32) As stated in recital 48 of Regulation (EEC) No 2477/93, the Commission concluded that it was in the interests of the Community that measures be taken. Climax requested that its original submission on Community interest be again considered before a definitive determination is made.
- (33) The Commission points out that the argument put forward by Climax at the provisional stage, i.e. that the only result of the imposition of measures on Chinese exports would be to grant an advantage to its competitors, particularly Indonesian producers, has been addressed in recital 46 of the provisional Regulation. No new arguments have been presented which would cause the Commission to alter the conclusions set out in the recital.

The Council confirms this conclusion.

## J. Definitive duty

- (34) Given that the injury level exceeded the dumping margin, the duty should be based on the latter in accordance with Article 13 (3) of the Basic Regulation.

## K. Collection of definitive duties

- (35) In view of the dumping margin established, and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts secured by way of provisional anti-dumping duty should be definitively collected at the rate corresponding to the definitive rate of duty,

HAS ADOPTED THIS REGULATION :

### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of photo albums in bookbound form falling within CN code ex 4820 50 00, (Taric code 4820 50 00 10) originating in the People's Republic of China.
2. The rate of the anti-dumping duty applicable to the net free-at-Community-frontier price, before duty, shall be 18,6 %.
3. The provisions in force concerning customs duties shall apply.

### Article 2

The amounts secured by way of provisional anti-dumping duty imposed by Regulation (EEC) No 2477/93 shall be definitively collected at the rate corresponding to the definitive duty.

### Article 3

This Regulation shall enter into force on the day following 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, 22 December 1993.

*For the Council*

*The President*

J.-M. DEHOUSSE

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