

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EEC) No 1812/91**

of 24 June 1991

**imposing a definitive anti-dumping duty on imports of espadrilles originating in the People's Republic of China 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 by that Regulation,

Whereas,

**A. PROVISIONAL MEASURES**

- (1) Commission Regulation (EEC) No 3798/90<sup>(2)</sup> imposed a provisional anti-dumping duty on imports of espadrilles originating in the People's Republic of China falling within CN codes ex 6404 19 90 and ex 6405 20 99. This duty was extended for a period of two months by Regulation (EEC) No 1051/91<sup>(3)</sup>.

**B. SUBSEQUENT PROCEDURE**

- (2) Following the imposition of the provisional anti-dumping duty, the Chinese Chamber of Commerce for Import and Export of Light Industrial Products and Arts-Crafts, hereinafter referred to as the 'Chinese Chamber of Commerce', acting on behalf of the three producer/exporters specified in Regulation (EEC) No 3798/90, who were joined by a fourth producer/exporter — the Shanghai Stationery and Sporting Goods Import and Export Corporation — which had not previously made itself known to the Commission, requested, and was granted, a hearing by the Commission. The Chinese Chamber of Commerce also made its views known in writing.
- (3) The three importers' associations which had previously responded, together with three importers and a group of nine importers who had not previously

made themselves known to the Commission, also requested, and were granted, hearings and made their views known in writing.

- (4) The complainant also requested, and was granted, a hearing.
- (5) The parties concerned were informed of, and implemented, all the procedures for exercising their rights under Article 7 (4) of Regulation (EEC) No 2423/88.

In particular, they were informed in writing, at their own request, of the essential facts and considerations upon which the Commission proposed to base its recommendation that a definitive duty be imposed with definitive collection of the amounts secured by way of the provisional duty. They were also given the opportunity to make comments after receiving this information.

- (6) The Commission studied these reactions and took account of a number of the views expressed in its definitive conclusions, which are approved by the Council.

- (7) The Commission's dumping investigation covered the period from 1 January 1988 to 31 December 1988. Several parties criticized the choice of this reference period on the grounds that it was too remote from the initiation of the proceedings.

In addition to the reasons given by the Commission in recital (8) of Regulation (EEC) No 3798/90, where this selection was justified in terms of the Commission's determination to gather the fullest possible and most easily verifiable information from generally small Community producers and importers, the Council considers that this selection will have only a limited effect on the measure itself. None of the indicators points to a fall in the normal value in 1989.

**C. PRODUCT COVERED BY THE INVESTIGATION**

- (8) The group of importers mentioned in (3) above asked the Commission to reconsider its provisional conclusions, as set out in recitals (9) and (10) of

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

<sup>(2)</sup> OJ No L 365, 28. 12. 1990, p. 25.

<sup>(3)</sup> OJ No L 107, 27. 4. 1991, p. 1.

Regulation (EEC) No 3798/90, with a view to drawing a distinction between type A espadrilles and type B espadrilles. These two types are described in detail in recital (9) of Regulation (EEC) No 3798/90.

This request was based on the argument that consumers are motivated by quite different criteria in opting for one or other of the two types, and that importers apply different marketing strategies to the two types, which should be reflected in the prices.

- (9) The Commission takes the view that all espadrilles having unheeled soles no thicker than 2,5 cm constitute a single product for the purposes of these proceedings. The physical characteristics and uses of espadrille types A and B are similar.

However, the Commission notes that espadrille types A and B have different CN codes.

Furthermore, the Commission concedes that the physical differences brought to its attention by the importers, which appear to be largely well-founded, may have an effect on prices.

- (10) Consequently, as regards the dumping margin, the difference in selling prices, the injury threshold and the level of duty, the Council considers it appropriate that a distinction be drawn between espadrille types A and B.

#### D. DUMPING

##### (a) Normal value

- (11) Since the People's Republic of China does not have a market economy, the Commission, in its preliminary investigation, based its calculation of the normal value on data collected in another non-Community market economy country, in accordance with the provisions of Article 2 (5) of Regulation (EEC) No 2423/88. To this end, the Commission decided that Uruguay constituted an appropriate reference country and — for the reasons set out in recital (16) of Regulation (EEC) No 3798/90 — calculated the normal value on the basis of the constructed value of similar products in that country, determined by adding the production cost of the espadrilles and a reasonable profit margin.

- (12) Several of the parties concerned criticized the selection of Uruguay as reference country, suggesting that the normal value should instead be constructed in Bangladesh, a country which they argued has more in common with China than Uruguay.

In response to this argument, in October 1990 the Commission endeavoured to secure the cooperation of espadrille producers in Bangladesh. Eventually, in February 1991 two Bangladeshi producers informed the Commission that they were prepared to cooperate in the procedure, but:

- one of them, having started production in September 1989, was able to supply full information only for 1990,
- and the other, having also only recently started production (in 1988, according to the information received by the Commission), was in a position to supply data only for 1989 and 1990.

Given:

- the fact that these offers of cooperation were made at a very late stage in the investigation by recently established producers, whose production costs were likely to be influenced by expenses or other factors associated with the starting up of a new operation,
- the implications of changing the reference period, which would have been necessary had it been decided to take data supplied by these producers into account,

the Commission takes the view that the selection of Uruguay as reference country is appropriate and not unreasonable.

- (13) Nevertheless, having regard to the necessity of distinguishing between espadrille types A and B, and given the apposite arguments advanced in respect of certain physical differences and import charges affecting the comparability of the prices presented by the Chinese Chamber of Commerce, the Commission elected to modify its calculations concerning the constructed value in Uruguay.

For both types of espadrille, these modifications concern:

- the canvas upper: the fabric used in Uruguay is generally thicker and therefore heavier per square metre than that used by Chinese producers. This difference, together with its impact on costs, was taken into account. However, it was felt that this difference could not be

applied to all espadrilles exported from China, some of which use a fabric closely resembling that used in espadrilles produced in Uruguay. Given the difficulties encountered in endeavouring to establish a reliable weighting for this factor, the Commission considered it reasonable to apply this difference to a significant proportion — no less than half — of the espadrilles exported from China,

- the rubber used to vulcanize the soles: in its calculations, the Commission had used vulcanization costs based on the use of 'Malaysia No 1' or equivalent rubber as the raw material. It then transpired that the Chinese producers use another, cheaper type of rubber, or synthetic materials which also cost less. These differences were conceded, and were translated into monetary terms for each A and B type of espadrille separately. The necessary adjustment was adopted in its entirety for rubber, and according to the same conditions as those applied to the canvas for synthetic materials. The Commission took the view that it had sufficient evidence at its disposal to enable it to conclude that synthetic materials are used in a significant proportion of the espadrilles exported by China, but that the data supplied by the Chinese exporters did not allow it to conclude that synthetic materials are used in all exported espadrilles.

Furthermore, the Chinese exporters pointed out that in China the raw materials used to vulcanize the soles are obtained on the domestic market and are not therefore dutiable, contrary to the assumptions made by the Commission when calculating vulcanization costs during the preliminary investigation. The Commission therefore adjusted its calculations to allow for customs duties, reducing the vulcanization costs accordingly in constructing the normal value of the two types of espadrille.

- (14) Having in principle accepted these adjustments, designed to accommodate differences affecting price comparability, concerning the respective physical characteristics of the espadrilles produced in the People's Republic of China and those produced in Uruguay and also with regard to certain import charges, the Commission took the view that it remained appropriate and reasonable to establish the normal value on the basis of the constructed value in Uruguay, whilst drawing a distinction between the two types of espadrille.

#### (b) Export prices

- (15) Given the pertinence of the arguments submitted in support of the distinction between espadrille types A and B, the Commission was induced to re-examine its provisional conclusions as set out in recital (23) of Regulation (EEC) No 3798/90, according to which the prices indicated by the two importers which cooperated in the investigation could not on their own be regarded as indicative.

The Commission noted that these two importers:

- are each specialized in a different type of espadrille (one in type A and the other in type B),
- are not occasional importers and therefore regularly place orders which in each case are for significant quantities, thus ensuring that the prices are representative of the trade between China and the Community, which, according to the information received by the Commission, is characterized by relatively uniform prices in this sector.

- (16) The Commission therefore conceded that the information obtained from these importers constitutes the best available data for establishing a distinction between espadrille types A and B. Export prices for the two types of espadrille were therefore established on the basis of the said information, which also had the advantage of having been verified in the field during the preliminary investigation.

#### (c) Comparison and dumping margin

- (17) The comparisons were made using the same method as that used during the preliminary investigation, but with the introduction of a distinction between espadrille types A and B.

- (18) On this basis, it is confirmed that espadrilles of both types are being dumped. The dumping margin is the difference between the normal value established for medium-sized espadrilles of each type and the weighted average export price to the Community of each type and amounts to:

- 105,3 % for type A espadrilles, and
- 70,3 % for type B espadrilles of the free-at-Community-frontier value of imports of the products in question originating in the People's Republic of China, for the Chinese exporters taken as a whole.

- (19) The Council approves the Commission's conclusions set out in recitals (11) to (18).

#### E. INJURY

- (20) In the matter of injury, two main arguments were raised by the Chinese exporters and the Community importers. Firstly, several importers stressed that, contrary to recital (32) of Regulation (EEC) No 3798/90, they act as international commercial agents and not as specialist footwear wholesalers. They therefore maintained that the comparison designed to demonstrate the difference in selling prices in the Community between espadrilles originating in the People's Republic of China and espadrilles manufactured by Community producers should take this factor into account, inasmuch as the prices charged by the latter reflect their sales to specialist footwear wholesalers.
- (21) The Commission accepted that this argument was valid and therefore proceeded to recalculate the difference in selling prices separately for espadrilles types A and B:
- by using the available data to adjust the prices (free at Community frontier, cleared through customs and checked with the two importers cooperating with the investigation) to the same commercial level as the Community producers' prices,
  - by adjusting the Community producers' prices, which do not normally distinguish between espadrille types A and B. To this end, the Commission judged that the average selling price for Community-produced espadrilles could be taken as being representative of type B espadrilles, and therefore established the price for type A espadrilles by reducing the selling price in proportion to the difference in production costs between types A and B.
- (22) On the basis of these adjusted figures, the Commission observed that the difference in selling prices expressed as a percentage of the prices free at Community frontier, not cleared through customs, for espadrilles originating in the People's Republic of China, were as follows during the reference period:
- 209,6 % for type A,
  - and
  - 114,7 % for type B.
- (23) The second argument put forward by the Chinese exporters and the Community importers concerned the causal link between the injury and the dumped imports. According to these parties, the poor results achieved by Community businesses in this sector are due to weak management.
- (24) In response to this argument, the Commission referred to the wording of recitals (46) and (49) of Regulation (EEC) No 3798/90, which concedes that part of the injury sustained by the Community industry was due to the restructuring and modernization of the sector in the 1980s and to competition from substitute products. However, the Commission is of the opinion that the argument put forward is not supported by evidence which might cause it to reconsider its provisional conclusion to the effect that the dumped imports brought to light are the cause of an injury which, taken on its own, is serious.
- (25) No other new factor relating to the injury or to the causal link between the injury and the dumped imports was put forward following the imposition of the provisional duty. The Council confirms the conclusions concerning the injury as set out in Regulation (EEC) No 3798/90, with the exception of those concerning the difference in prices, where recitals (21) and (22) above replace recital (32) of the said Regulation.

#### F. COMMUNITY INTEREST

- (26) In the matter of Community interest, the importers reiterated their observations concerning the advantage for consumers of having a source of low-priced supplies, adding that, contrary to what is stated in the third paragraph of recital (53) of Regulation (EEC) No 3798/90, the benefits of low-priced imports are often passed on to the final consumers.
- (27) Owing to the limited number of importers cooperating in the investigation, the Commission does not have available complete information concerning the second point raised. However, it takes the view that this point is subsidiary to the arguments set out in recitals (52) to (54) of Regulation (EEC) No 3798/90, and points out:
- that the distinction drawn between A and B type espadrilles, which takes consumers' motivations into account, should ensure that the measure will reflect market realities more closely,
  - that the lowering of the normal value (justified by considerations relating to the physical characteristics of the products to which consumers may be sensitive) and hence of the minimum price should allow consumers to benefit from imports to a greater extent than before.

- (28) The Council confirms the Commission's conclusions set out in recitals (52) to (56) of Regulation (EEC) No 3798/90, according to which it is in the Community interest to eliminate the injury caused to the Community industry by these dumped imports.

#### G. DEFINITIVE DUTY

- (29) The Council confirms that it is considered necessary to impose a definitive duty which, as regards imports invoiced by Chinese exporters, will take the form of a variable duty equal to the difference between the net price per pair, free at Community frontier, not cleared through customs, of Chinese imports and a minimum price fixed for each type of espadrille.
- (30) To determine the level of the definitive duty, for each type of espadrille the Commission compared the dumping margin and the amount necessary to eliminate the injury. This amount was determined using the same method as that used in the preliminary investigation, as described in recital (57) of Regulation (EEC) No 3798/90, but separately for types A and B. The price differences established on this basis are as follows:
- 255,7 % for type A,
  - and
  - 154,9 % for type B, expressed as a percentage of the free-at-Community-frontier value, not cleared through customs.

It is therefore apparent that the established dumping margins, which are also expressed as a percentage of the value free at Community frontier, not cleared through customs, are lower than the percentage price increases necessary to eliminate the injury.

Consequently, the anti-dumping duty to be imposed must correspond to the established dumping margins.

- (31) The Council therefore confirms that the minimum price referred to in recital (29) must be determined using the normal value, which will henceforth be determined separately for each type of espadrille and will be lowered as before to the level of the smallest sizes for the reasons set out in recital (58) of Regulation (EEC) No 3798/90.

The minimum prices thus established are as follows:

- ECU 0,93 per pair for type A espadrilles,
- and
- ECU 0,99 per pair for type B espadrilles.

These minimum prices, which will constitute the basis for calculating the variable duty and will be valid for all sizes, were established free at Commu-

nity frontier, not cleared through customs. However, to leave as few loopholes as possible, the Council judges it expedient that when the imported products put into free circulation are not invoiced by a Chinese producer, the duty applied should be an *ad valorem* duty reflecting the established dumping margins, i. e. 105,3 % for type A espadrilles and 70,3 % for type B espadrilles.

#### H. COLLECTION OF PROVISIONAL DUTY

- (32) Several importers, together with the group of nine importers referred to in recital (3), requested that espadrille imports already dispatched or subject to firm contracts at the date on which the provisional duty entered into force should be exempt from the duty and consequently that the provisional duty should not be definitively collected in such cases.
- (33) In accordance with the provisions of Article 2 (1) of Regulation (EEC) No 2423/88, anti-dumping duties are applicable 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>(1)</sup>, the anti-dumping Regulation, which is applicable to products imported under conditions of unfair competition, does not provide for any exemptions to this rule. Moreover, it should be recalled that the Commission made considerable efforts to keep the parties concerned informed and that 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.
- (34) 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 under the definitive duty imposed separately for each type of espadrille — which is rendered possible by the fact that the two types under consideration come under different CN codes — 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 espadrilles originating in the People's Republic of China, falling within CN codes ex 6404 19 90 (Taric code 6404 19 90\*10) and ex 6405 20 99 (Taric code 6405 20 99\*10).

<sup>(1)</sup> OJ No L 35, 9. 2. 1982, p. 1.

2. When the products described in paragraph 1 are put into free circulation invoiced by an exporter located in the People's Republic of China, the amount of the duty will be the difference between the minimum prices given hereunder and the net price per pair, free at Community frontier, not cleared through customs:

- ECU 0,99 per pair for espadrilles falling within CN code ex 6404 19 90 (additional Taric code-8545), and
- ECU 0,93 per pair for espadrilles falling within CN code ex 6405 20 99 (additional Taric code-8546).

The free-at-Community-frontier price is net if the effective payment conditions are such that payment is made within thirty days of the date on which the goods arrive on the customs territory of the Community. It is reduced by 1 % for each extra month added to the time allowed for completion of payment.

3. When the products described in paragraph 1 are put into free circulation invoiced by a person other than an exporter located in the People's Republic of China, the amount of the duty, applicable to the net price free-at-Community-frontier, not cleared through customs, is set at:

- 70,3 % for espadrilles falling within CN code ex 6404 19 90 (additional Taric code-8547), and
- 105,3 % for espadrilles falling within CN code ex 6405 20 99 (additional Taric code-8548).

The free-at-Community-frontier price is net if the effective payment conditions are such that payment is made

within thirty days of the date on which the goods arrive on the customs territory of the Community. It is increased by 1 % for each extra month added to the time allowed for completion of payment.

4. For the purposes of this Regulation 'espadrilles' are held to be shoes with unheeled plaited fibre soles, whether or not strengthened with rubber or plastics over a variable surface, which are not thicker than 2.5 cm.

5. The provisions in force concerning customs duties shall apply.

#### *Article 2*

Amounts secured by way of the provisional anti-dumping duty imposed by Regulation (EEC) No 3798/90 will be definitively collected to the extent of the amounts secured and to the extent of the amounts resulting from the application of the definitive duty as fixed in Article 1 (2).

Secured amounts in excess of these amounts will be released.

#### *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 Luxembourg, 24 June 1991.

*For the Council*  
*The President*  
J.-C. JUNCKER