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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1050/2002

of 13 June 2002

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of recordable compact disks originating in Taiwan

THE COUNCIL OF THE EUROPEAN UNION,

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], (hereinafter referred to as the 'basic Regulation'), and in particular Article 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 2479/2001 [2], (hereinafter referred to as the provisional Regulation), imposed a provisional anti-dumping duty on imports of recordable compact disks (CD-Rs) falling within CN code ex 8523 90 00 (TARIC code 8523 90 00*10) and originating in Taiwan.

(2) It is recalled that the investigation of dumping and injury covered the period from 1 January 2000 to 31 December 2000 (hereinafter referred to as the investigation period or IP). The examination of trends relevant for the injury analysis covered the period from 1 January 1997 to the end of the IP (hereinafter referred to as the period considered).

B. SUBSEQUENT PROCEDURE

(3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures, several interested parties submitted comments in writing. In accordance with the provisions of Article 6(5) of the basic Regulation, the parties who so requested were granted an opportunity to be heard orally.

(4) The Commission continued to seek and verify all information it deemed necessary for the establishment of definitive findings.

(5) All 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 duties and the definitive collection of amounts secured by way of provisional duties.

(6) They were also granted a period within which they could make representations subsequent to this disclosure.

(7) The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings have been modified accordingly.

(8) Following the adoption of provisional measures, two companies, Nan Ya Plastics Corporation, Taipei and Rimma International Inc., Taipei in Taiwan, applied for new exporting producer status and requested not to be treated differently from the companies that cooperated in the investigation. However, since sampling has been used in the investigation of dumping, a new exporters' review pursuant to Article 11(4) of the basic Regulation with the objective of determining individual dumping margins cannot be initiated in this proceeding. The examination of these requests together with the additional evidence provided by these companies showed that only one of them, Nan Ya Plastics Corporation, fulfilled all the requirements of Article 11(4) of the basic Regulation, which would otherwise apply, i.e.:

— that it did not export the product concerned to the Community during the IP,

— that it is not related to any of the exporters or producers in Taiwan which are subject to the provisional anti-dumping measures, and

— that it has actually exported the product concerned to the Community after the IP on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 334, 18.12.2001, p. 8.

In these circumstances, in order to ensure equal treatment for this new exporting producer and the cooperating companies not included in the sample, Nan Ya Plastics Corporation was added to the list of companies subject to the weighted average duty rate listed in Article 1(2) of the provisional Regulation.

C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(9) Given the similar appearance of recordable compact disks (CD-Rs) and re-writable compact disks (CD-RWs) which are not covered by the investigation, the complainant, the Committee of European CD-R Manufacturers (CECMA), requested that the product under consideration (CD-Rs) should be distinguished from CD-RWs in order to ensure the proper application of the duties imposed.

(10) The nature of the disk is normally mentioned on the disk itself or on the packaging. Therefore, no particular additional specification appears to be necessary. In the unlikely event that such identification would be absent, the colour of the non-printed side of the disc gives an indication of the nature of the product. CD-Rs show on their non-printed sides either bright colours (such as cyanine light blue, phtalocyanine green, yellow, or green/yellow combined, silver and gold) or azo dark blue. CD-RWs show a dark grey colour with a low reflectivity compared to CD-Rs.

(11) CD-Rs, which have a size that is smaller than the standard diameter of 12 cm, fall under the description of the product concerned. The 8 cm CD-R holds a lower capacity or play duration than the standard 12 cm CD-R. Some 8 cm CD-Rs have been further adapted to match the size of a business card, but the characteristics of such a CD-R remain the same as of a 12 cm CD-R, despite the difference in the form of the disc. All mentioned types of smaller CD-R can be used by any personal computer in the same way as a 12 cm CD-R. Therefore, the 8 cm CD-R and the business card type CD-R are both covered by the investigation and by the measures adopted.

(12) The so-called minidisc, however, should be distinguished from CD-Rs. Although the minidisc is a recordable optical product, using the same laser technology as the CD-R, it is at the same time erasable and always encased in a fixed housing, comparable to that of 3,5 inch diskettes. To write/read on the minidisc requires specific equipment (minidisc recorder or player), which does not form part of a personal computer. In view of the differences in physical characteristics and as the targeted market is entirely different, the minidisc is not covered by the measures adopted.

(13) Some parties claimed that the definition of the product concerned in the provisional Regulation did not take account of the fact that various types of packaging for CD-Rs are encountered on the market. The issue of packaging, the related costs of production and the comparison of the Community industry's production with Taiwanese imports are dealt with under point 2(b) 'Price undercutting' and under point 3(a) 'Cost of production and profitability' of Section 'G. Injury' of this Regulation. It should be noted that packaging is only relevant in the context of the analysis of price comparison and not for the definition of the product concerned.

(14) In view of the above, the provisional findings as described in recitals 9 and 10 of the provisional Regulation are confirmed.

2. Like product

(15) In the absence of any further comments, the definition of the like product as described in recital 11 of the provisional Regulation is confirmed.

D. SAMPLING

(16) No comments concerning the sampling of Taiwanese exporting producers were received and, therefore, the conclusions set out in recitals (12) to (18) of the provisional Regulation are hereby confirmed.

E. DUMPING

1. Normal value

(17) Following the adoption of provisional measures, one exporting producer requested the exclusion of the selling, general and administrative expenses (SG and A) of its related company in the domestic market from the total SG and A expenses used in the ordinary course of trade test and in constructing normal value. The exporting producer argued that its related company was set up to conduct internet business, which incurs high SG and A costs and merely became involved, temporarily, with sales of the product concerned to help it improve its financial situation. The exporting producer claimed that almost all SG and A expenses of its related company were unrelated to the sales of the product concerned. It also requested the Commission to disregard completely, for the dumping calculations, the domestic sales of the related company for the same reasons.

(18) In this respect, the claim to disregard completely the domestic sales and the SG and A expenses of the related company was rejected as it could not be supported by any verified information. However, in determining normal value the Commission accepted to exclude certain amounts of SG and A expenses which were shown not to relate to domestic sales of the product concerned.

(19) Two exporting producers claimed that the Commission should not have allocated all interest expenses to the product concerned but only those related to the operational activities. They argued that long-term and short-term investments form part of total assets and require financing and hence, incur interest expenses that are not related to the production and sales of the product concerned.

(20) This claim was accepted because it was shown that certain financing expenses did not concern operational activities related to the production and sales of the product concerned. The SG and A expenses were therefore revised before being used in the ordinary course of trade test and in constructing normal value.

2. **Export price**

(21) No claims were made concerning the determination of the export price. The conclusions set out in recital 26 of the provisional Regulation are hereby confirmed.

3. **Comparison**

(22) Three exporting producers claimed that the Commission proceeded to a comparison between normal value and export price without treating packing costs consistently between constructed normal value and normal value based on actual prices. They argued that it was inappropriate for the Commission to consider packing costs to be an allowance in case of normal value based on prices but not to consider it as an allowance in case of constructed normal value.

(23) The three exporting producers also argued that packing cost was a mandatory allowance under Article 2(10)(f) of the basic Regulation, when differences exist between the directly related packing costs of the normal value and export price. They argued that in case of a comparison of the weighted average normal value with the prices of individual export transactions, the Commission compared individual export prices including individual packing costs per transaction, with a constructed normal value including a weighted average export packing cost for the same product type. The three exporting producers therefore requested the deduction of packing costs from all export prices and constructed normal value on the same basis.

(24) With regard to the alleged mandatory nature of the allowance for packing costs, it is considered that an allowance under Article 2(10) of the basic Regulation is granted only when there are differences in factors, such as packing, which do not allow a fair comparison between normal value and export price. In fact in this case, the constructed normal value was based on the cost of production of the exported type including its packing cost and, therefore, no difference in packing costs existed between export price and normal value.

(25) However, the claim concerning the comparison of individual export prices including individual packing costs with a constructed normal value including a weighted average export packing cost per product type was accepted. Therefore, for the four exporting producers that had exported product types for which normal value had to be constructed, the construction of normal value was revised in order to take account of an export packing cost per product type and packing type.

(26) One exporting producer claimed that the Commission had not taken into account in the dumping calculations certain changes in packing types of its export sales which were made during the verification visit.

(27) This claim was accepted and the packing types concerned were modified.

4. **Dumping margins**

(28) Two exporting producers claimed that the Commission should not have established the dumping margins on the basis of a comparison by product type of the weighted average normal value with the prices of all individual export transactions as they considered the Commission's reasoning for having recourse to this method insufficient. Although the two companies admitted that the export prices differed significantly among time periods during the investigation period, they argued that there was a parallel declining trend for world prices, including the normal values, and for export prices and that therefore the differences in export prices should not be taken into account. They also suggested that a transaction to transaction comparison of normal value and export price should have been used instead.

(29) These arguments were not accepted. Concerning the transaction to transaction comparison, it is noted that the Community does not use this methodology because the process of selecting individual transactions in order to make such a comparison is considered too impracticable and arbitrary, at least in cases such as this one, where thousands of export and domestic transactions existed. It was therefore concluded that a transaction to transaction comparison could not be an appropriate alternative comparison method.

(30) In order to use a comparison of a weighted average normal value to prices of all individual export transactions as opposed to a comparison of a weighted average normal value with a weighted average of export prices, there must be a finding that export prices differ significantly among different purchasers, regions or time periods and that the use of the other two comparison methods, specified in Article 2(11) of the basic Regulation, would not reflect the full degree of dumping. As to the first requirement, it has been found that export prices were significantly lower during the second half of the investigation period as compared to the first half and this finding was not disputed by the exporting producers concerned. They have contested however, whether the difference in prices constituted a pattern, which they alleged was the result of a worldwide fall in prices including normal values. It was considered that the decline in export prices constituted a pattern for two reasons: firstly, because the decline prevailed throughout the second half of the investigation period; and secondly, because of its extent, which was found to be very substantial and in some cases reached 50 %. As to the claim that the differences in export prices were because of worldwide trends in prices including normal values, this was considered irrelevant as the appropriate analysis has to be made on export prices to the Community. It is also noted that Article 2(11) of the basic Regulation requires a demonstration of a pattern of export prices and not an explanation of why such a pattern existed.

(31) In relation to the requirement to demonstrate that only a comparison of a weighted average normal value to prices of all individual export transactions will reflect the full degree of dumping, it is appropriate to note that the application of this methodology gave a significantly higher dumping margin than a comparison of a weighted average normal value with a weighted average of export prices, which would not take into account the effect of the significant decline of export prices into the Community during the second half of the IP. Hence, unless a comparison of a weighted average normal value to prices of all individual export transactions had been used, the significantly higher or targeted dumping which took place during the second half of the investigation period would have been inappropriately disguised by the use of a comparison of a weighted average normal value with a weighted average of export prices. It was also appropriate to reflect in the calculation of dumping, via a comparison of a weighted average normal value to prices of all individual export transactions, the fact that export prices in the second half of the investigation period were below cost of production and thus constituted a very predatory form of dumping.

(32) The same two exporting producers referred to the Panel and the Appellate Body reports in the Indian bedlinen case before the WTO's Dispute Settlement Body (DSB) and claimed that the so called 'zeroing of negative dumping margins' is not allowed when calculating dumping margins based on a comparison of a weighted average normal value to all individual export transactions.

(33) In respect to the DSB case quoted, it is noted that the methodology considered by the Panel and the Appellate Body was different from the methodology used in the present investigation. The DSB has not adopted any recommendation concerning a comparison of a weighted average normal value to all individual export transactions. In any event, as far as 'zeroing' is concerned, it is noted that if this practice was not used, a comparison of a weighted average normal value to all individual export transactions by product type and a comparison of a weighted average normal value with a weighted average of export prices by product type would give the same dumping margin. In such a case, the methodology set out in the last sentence of Article 2(11) of the basic Regulation, to compare a weighted average normal value to all individual export transactions would become redundant. Furthermore, in a case of targeted dumping, 'zeroing' allows to avoid that positive dumping margins on dumped sales are disguised by negative dumping margins. Therefore, the claim that 'zeroing' is not allowed when comparing a weighted average normal value to all individual export transactions cannot be accepted.

(34) Dumping margins were established as set out in recitals 28 to 33 of the provisional Regulation. The comparison of the weighted average normal value per product type, revised as appropriate, with the weighted average export price per product type on an ex-factory basis for two companies in the sample, and with the ex-factory export prices of all individual export transactions for the three other companies in the sample, showed the existence of dumping for all investigated exporting producers included in the sample.

(35) Following changes to the calculations in accordance with the findings noted above, the dumping margins of the investigated companies were revised slightly. This revision has not affected the choice of methodology set out in recitals 28 and 29 of the provisional Regulation which is hereby confirmed. Consequently, the weighted average dumping margin calculated for the cooperating companies not included in the sample pursuant to Article 9(6) of the basic Regulation was also revised. The revised calculations have also affected the dumping margin established for the non-cooperating companies. The definitive dumping margins as a percentage of the CIF import price duty unpaid are as follows:

— Auvistar Industry Co.	17,7 %
— Princo Corporation	29,9 %
— Prodisc Technology Inc.	17,7 %
— Ritek Corporation	17,7 %
— Unidisc Technology Co.	17,7 %
— Cooperating exporting producers not in the sample	19,2 %
— Non-cooperating exporting producers	38,5 %.

F. **COMMUNITY INDUSTRY**

(36) In the absence of any new information on the Community industry, the provisional findings as described in recitals 35 to 38 of the provisional Regulation are confirmed.

G. **INJURY**

1. **Community consumption**

(37) In the absence of any new information, the provisional findings concerning the Community consumption as described in recital 40 of the provisional Regulation are confirmed.

2. **Imports concerned**

(a) *Volume, price and market share of imports originating in Taiwan*

(38) In the absence of any new information on the volume, price and market share of imports of CD-Rs originating in Taiwan, the findings as described in recitals 41 to 43 of the provisional Regulation are confirmed.

(b) *Price undercutting*

(39) A number of parties questioned whether packaging had been properly taken into account for the price undercutting calculations. One specific claim, that the Taiwanese exporting producers offer a wider choice of packaging than the Community industry, is addressed under point 3(a) 'Cost of production and profitability' of the Section 'G. Injury' of this Regulation.

(40) In terms of price undercutting, it should be noted that the comparison between sales prices on the Community market of CD-Rs produced by the Community industry and those produced and imported from Taiwan was only made for CD-Rs having both the same basic characteristics (in terms of type of data stored, storage capacity, reflective layer and whether the CD-R was printed or not) as well as having identical packaging.

(41) It was claimed that CD-Rs imported into the Community originating in Taiwan and the CD-Rs produced by the Community industry could not be compared because of differences in branding. Under that claim a product of the Community industry, which was said to be typically branded, would attract a price premium compared to an unbranded Taiwanese product.

(42) The investigation showed that branding only influences consumers when the sales price is similar, so that whilst consumers are not willing to pay a premium for a branded product they may be inclined to choose it when prices are the same.

(43) Community producers sell both branded and 'unbranded' products, although even the latter are usually branded according to the specifications and with the name of the client retailer. The investigation did not reveal any price differential between branded and 'unbranded' sales to retailers. Moreover, the Taiwanese exporting producers acted in exactly the same way, selling under their own brand or to the client's specification. Products marketed under a brand name, which the consumer would consider as Community-based, were frequently found to be manufactured in Taiwan.

(44) In view of the above, the provisional findings on price undercutting and the average undercutting margin of 29 %, as described in recitals 44 to 47 of the provisional Regulation, are confirmed.

3. **Situation of the Community industry**

(a) *Cost of production and profitability*

(45) It was claimed that the Taiwanese exporting producers offer a wider choice of packaging than the Community industry and that the provisional Regulation did not provide sufficient explanation on the effect of packaging on the cost of production.

(46) Although the investigation has shown that there was a wide variety of packaging types which were updated regularly following marketing efforts, the following main categories could be distinguished. They are ranked according to increasing average cost of production during the IP with the figure between brackets indicating the cost differences in an indexed form. Contrary to the claim that the Taiwanese exporting producers offer a wider choice of packaging than the Community industry, it is confirmed that the same types of packaging are offered by both above categories of suppliers on the Community market, the choice being determined by the same category of unrelated customers, i.e. client retailers.