

COMMISSION

COMMISSION DECISION

of 10 May 1984

accepting undertakings given in connection with the anti-dumping proceeding concerning imports of certain sensitized paper for colour photographs originating in Japan and terminating that proceeding

(84/259/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, as amended by Regulation (EEC) No 1580/82⁽²⁾, and in particular Article 11 thereof,

After consultations within the Advisory Committee as provided for by the above Regulation,

Whereas :

A. Procedure

- (1) In August 1983 the Commission received a complaint lodged by the European Council of Chemical Manufacturers' Federations (CEFIC) on behalf of Agfa-Gevaert AG (Agfa) whose output constitutes a major proportion of Community production of the product in question. The complaint contained evidence of dumping and of material injury resulting therefrom which was considered sufficient to justify the initiation of a proceeding.
- (2) The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*⁽³⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of sensitized paper for

colour photographs falling within Common Customs Tariff heading No ex 37.03, corresponding to NIMEXE code ex 37.03-29, originating in Japan and commenced an investigation.

- (3) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting country, the complainant and those Community producers which did not participate in the complaint but declared their support for it, that is, Eastman Kodak Co., London, UK (Kodak) and Minnesota Mining and Manufacturing Co., Milan, Italy (3M), and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.
- (4) All of the known producers, exporters and importers made their views known in writing. All of the exporters, some of the importers and consumers and the complainant requested and were granted hearings. One of the exporters, Konishiroku Photo Industry Co., Ltd (Konishiroku) requested and was granted the opportunity of a meeting with Agfa in accordance with Article 7 (6) of Regulation (EEC) No 3017/79. All other exporters were invited and either declined or did not express interest in attending this meeting which was subsequently cancelled upon the request of Konishiroku.
- (5) A submission was made by the Council of the Professional Photographers of Europe, 'Europhot', on behalf of the end users of sensitized paper for colour photographs.
- (6) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

⁽¹⁾ OJ No L 339, 31. 12. 1979, p. 1.

⁽²⁾ OJ No L 178, 22. 6. 1982, p. 9.

⁽³⁾ OJ No C 292, 28. 10. 1983, p. 2.

EEC producers :

Agfa-Gevaert AG, Leverkusen, Federal Republic of Germany,

Eastman Kodak Co., London, United Kingdom ;

Non-EEC producers/exporters :

Fuji Photo Film Co., Ltd, Tokyo, Japan (Fuji),

Konishiroku Photo Industry Co., Ltd, Tokyo, Japan (Konishiroku),

Mitsubishi Paper Mills, Ltd, Tokyo, Japan (Mitsubishi),

Oriental Photo Industrial Co., Ltd, Tokyo, Japan (Oriental) ;

EEC importers :

Visits were made to selected importers including the following companies affiliated to exporters :

Fuji Photo Film (Europe) GmbH, Düsseldorf, Federal Republic of Germany,

Fuji Photo Film (UK) Ltd, London, United Kingdom,

Konishiroku Photo Industry (Europe) GmbH, Hamburg, Federal Republic of Germany,

Konishiroku UK, London, United Kingdom.

- (7) The investigation of dumping covered the period from 1 October 1982 to 30 September 1983.

B. Normal value

- (8) Normal value was provisionally established on the basis of the weighted average of the domestic prices charged by each producer exporting to the Community. The use of this basis was contested by Fuji and Konishiroku on the grounds that sales on the domestic market are not at arms length and are thus not in the ordinary course of trade and should not therefore be used as a basis for comparison. In addition it was argued that the special characteristics of the Japanese market involved the provision of services which also made the use of domestic prices unsuitable. The alternative basis for normal value proposed by Fuji was constructed value or export prices to the United States, whilst for Konishiroku the alternative bases suggested were constructed value or export prices to non-EEC countries from Japan.

- (9) The Commission found, however, that sales to related parties in Japan are at prices comparable to those at which the like product is sold to unre-

lated parties, that the price levels of sales on the domestic market are in reasonable proportion to production costs and that sales in Japan are effected under conditions and practices which for a reasonable time have been normal in the trade under consideration. For the purpose of its provisional finding the Commission therefore considers it reasonable and appropriate to use domestic prices in Japan as a basis for normal value.

- (10) Two of the Japanese exporters sold the product in question for export to the EEC in the form of rolls of large width, whilst sales on the domestic market were only made after such large rolls were cut into smaller widths and packaged. It was proposed by the exporters that the normal value of the large rolls be based on their export prices to non-EEC countries or their constructed values. However, the Commission considers that the product sold on the domestic market is a like product because its characteristics closely resemble that exported to the EEC. Therefore, since there are sales on the Japanese domestic market which permit a proper comparison it has accordingly determined that normal value for large rolls should be based on the domestic selling prices and has taken account of the differences in the physical characteristics of the product sold for export to the Community referred to in paragraph 16, below.

C. Export price

- (11) With regard to exports by Japanese firms to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the product sold.
- (12) In all other cases where exports were made to subsidiary companies in the Community, export prices were constructed on the basis of the prices at which the imported product was first resold to an independent buyer, suitably adjusted to take account of all costs incurred between importation and resale including customs duty, and of a profit margin of 5 %. This profit margin was considered reasonable in the light of the profit margins of independent importers of the product concerned.

D. Comparison

- (13) In comparing normal value with export prices the Commission took account, where appropriate, of differences affecting price comparability ; this was

the case for conditions and terms of sale where claims of a direct relationship could be satisfactorily demonstrated. These differences concerned, in particular, commodity tax, credit terms, technical assistance, salaries paid to salesmen and ancillary costs, packing, transport, insurance and handling and loading.

- (14) In addition, adjustments were proposed for administrative expenses of sales offices, for advertising, for sales promotion and for overheads and general expenses. However, the evidence submitted was not sufficient to prove unequivocally the direct relationship of these costs to the sales in question and the Commission therefore made no adjustments for them. Oriental claimed an adjustment for differences in level of trade but no details of costs attributable to the different levels were provided and no adjustment was therefore made.
- (15) Subsequent to the investigation at its premises in Tokyo, Konishiroku claimed an adjustment for differences in credit terms which used a different basis from that previously verified. For the purpose of its preliminary finding the Commission used the basis agreed with the company during its visit to Tokyo.
- (16) With regard to the export prices of rolls of large width which were not sold on the Japanese market the Commission took account of the differences in physical characteristics of the product on the basis of those production costs accounting for such differences.

E. Margins

- (17) The above preliminary examination of the facts shows the existence of dumping in respect of the exports of all the Japanese producers investigated; the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.
- (18) These margins vary according to the exporter and the importing Member State concerned, the weighted average margin for each of the exporters investigated being as follows:

Fuji Photo Film Co.	68,2 %
Konishiroku Photo Industry Co.	51,6 %
Oriental Photo Industrial Co.	39,4 %
Mitsubishi Paper Mills Co.	12,2 %

F. Injury

- (19) With regard to the injury caused by the dumped imports the evidence available to the Commission shows that imports into the Community from Japan of sensitized paper for colour photographs increased from 17 530 000 m² in 1980 to 40 920 000 m² in 1983 with a consequent increase in the market share held by Japanese imports from 22,8 to 39,1 % in the same period. In the Federal Republic of Germany, the largest market in the EEC for the product in question and the complainant's domestic market, the Japanese imports obtained a market share of 61,6 % in 1983 compared to 30,7 % in 1980.
- (20) The weighted average resale price of these imports undercut the prices of the highest priced Community producers by up to 29,8 % during the investigation period, the average price undercutting of all EEC producers being 19,8 %. In general, the resale prices of the dumped imports were lower than those required to cover the costs of the complainant producer and provide a reasonable profit. However, the resale prices of the product in question from Oriental were found not to have caused any injury to the complainant producer because they were imported in relatively insignificant quantities.

Whilst the complaint has been lodged only on behalf of Agfa, which is the largest single producer of the product concerned in the Community, the other two Community producers, Kodak and 3M, have stated to the Commission that they consider that injury has been caused to them by dumped Japanese imports. In assessing the impact of the dumped imports, however, the Commission has been unable to measure the extent of any injury caused to the Community producers not participating in the complaint due to the limited amount of information provided by them but has confined itself to isolating the impact of the dumped imports on Agfa, the output of which constitutes a major proportion of the total Community production and which is therefore considered representative of Community industry as a whole.

- (21) The consequent impact on the complainant has mainly shown itself in a decline in market share in the Community from an index of 100 in 1980 (exact figure confidential) to an index of 68,8 in 1983. The average unit price levels for the product in question also declined by 4,2 % in 1983 as a result of competition with low-priced imports and, since sales revenue earned by the complainant for this product did not cover total costs, significant losses occurred in 1983. The

number of employees engaged in the manufacture of this product at the complainant's plant was reduced by over 10 % during 1983.

- (22) The Commission has considered whether injury has been caused to the complainant by other factors such as imports from non-EEC sources, changes in demand or the activities of other EEC producers. On the basis of evidence available it has been established, however, that the market share obtained in the Community by non-EEC imports other than Japanese decreased from a 1980 index of 100 (exact figures are confidential) to a 1983 index of 58, whilst the market share of the two other EEC producers remained stable during the same period, at a time when consumption in the Community increased by 36,2 %. The selling prices of the other EEC producers on the market in 1983 were moreover from 20,3 to 31,9 % higher than the complainant and from 29,9 to 42,5 % higher than the average price of the Japanese imports.

- (23) All these factors led the Commission to determine that the effects of the dumped imports of certain sensitized paper for colour photographs originating in Japan, taken in isolation, have to be considered as constituting material injury to the Community industry concerned.

G. Community interest

- (24) The Commission has considered whether it would be in the Community's interests to take protective measures. It has been argued that an increase in the price of the imported Japanese product due to an anti-dumping action could not be passed on either by photo-finishing laboratories or by photo-dealers selling colour prints to end users because of intense competition and as a result such laboratories and dealers would incur losses which would affect their continued survival. The Commission has obtained information, however, which indicated that there is a variance within the range of prices charged by laboratories to dealers of almost 250 % and that there is a difference of up to 400 % between the highest and lowest price charged by dealers to end users. Since only approximately one-quarter of the total

cost of the colour print is attributable to the cost of sensitized paper it is considered that a moderate increase in the price of this product would have a minor impact on the cost for the consumer and would not affect purchasing habits in a market where prices vary so greatly already.

- (25) After having considered the interest of the Community and both the dumping and the injury provisionally established, the Commission has come to the conclusion that action should be taken.
- (26) In the case of imports from Mitsubishi which were found to have caused injury corresponding to 0,54 % of the free-at-Community-frontier price, the Commission considers such injury to be *de minimis* and therefore not calling for any action.
- (27) In the absence of any injury caused by imports from Oriental, exports by this company should also be excluded from any action taken.

H. Undertakings

- (28) The exporters concerned were informed of the main findings of the preliminary investigation and commented on them. Undertakings were subsequently offered by Fuji and Konishiroku in respect of their exports of certain sensitized paper for colour photographs to the Community.
- (29) The effect of the said undertakings will be to increase export prices to the Community to the level which the Commission, having taken into account, on the one hand, the selling price necessary to provide an adequate profit to the main Community producer and, on the other hand, the purchase prices of Community importers and their costs and profit margins, considered necessary to eliminate injury. These increases in no case exceed the dumping margins found in the investigation.
- (30) In these circumstances the undertakings offered are considered acceptable and the proceeding may therefore be terminated without imposition of anti-dumping duties.
- (31) No objection to this course of action was raised in the Advisory Committee,

HAS DECIDED AS FOLLOWS :

Article 1

The undertakings given by : Fuji Photo Film Co., Ltd, Tokyo, Japan, and Konishiroku Photo Industry Co., Ltd, Tokyo, Japan in connection with the anti-dumping proceeding concerning certain sensitized paper for colour photographs falling within Common Customs Tariff heading No ex 37.03, corresponding to NIMEXE code ex 37.03-29, originating in Japan, are hereby accepted.

Article 2

The anti-dumping proceeding referred to in Article 1 is hereby terminated.

Done at Brussels, 10 May 1984.

For the Commission

Étienne DAVIGNON

Vice-President
