

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EEC) No 3522/90**  
of 4 December 1990

**amending Regulation (EEC) No 1768/89 with regard to the imposition of a definitive anti-dumping duty on imports of video cassettes originating in the Republic of Korea and Hong Kong**

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 14 thereof,

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

Whereas :

**I. PREVIOUS PROCEDURE**

- (1) By Regulation (EEC) No 1768/89<sup>(2)</sup>, the Council imposed a definitive anti-dumping duty of 21,9 % on imports of VHS video tape in cassettes falling within CN code ex 8523 13 00 originating in Hong Kong, with the exception of imports from several exporters which were subject to a lesser rate of duty or no duty at all.
- (2) In recital 43 of Regulation (EEC) No 1768/89 concerning companies which started or will start exporting own-produced cassettes to the Community after the investigation period (newcomers), the Council noted that the Commission is ready to initiate without delay a review proceeding if the exporting company can show the Commission, and supply to that effect, sufficient evidence that it did not export the products concerned to the Community during the period of<sup>1</sup> investigation. The company also has to demonstrate that it only started those exports after the said period and that

it is not related to or associated with any of the companies subject to the investigation.

**II. REVIEW PROCEDURE**

- (3) By a notice published in the *Official Journal of the European Communities*<sup>(3)</sup>, the Commission, after consultation within the Advisory Committee and in accordance with Article 14 of Regulation (EEC) No 2423/88, initiated a review of the anti-dumping duty concerned as regards a Hong Kong company, Master Technologies. That company submitted that it had not exported the products subject to the anti-dumping duty during the original period of investigation (1 January to 30 November 1987) and requested a review of the duty as it affected the company's particular situation in respect of its future exports to the Community. In addition, it submitted that it was not related to any of the companies in respect of which dumping was found to have occurred in the previous investigation and provided substantiated evidence of its intention to export video cassettes to the Community. Accordingly, the Commission started an investigation in order to verify whether Master Technologies could be considered as a newcomer and to establish the normal value of the products concerned sold by that company.

**III. RESULTS OF THE INVESTIGATION**

**1. Newcomer**

- (4) The investigation showed that Master Technologies had never exported own-produced video cassettes to the European Community and was about to begin such exports of its own-produced video cassettes.

In addition, it was found that this company had no link of any sort with the exporters involved in the previous procedure and in respect of which

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

<sup>(2)</sup> OJ No L 174, 22. 6. 1989, p. 1.

<sup>(3)</sup> OJ No C 20, 27. 1. 1990, p. 7.

dumping was found to have occurred. The Council confirms that this company should accordingly be considered as a newcomer within the meaning of Regulation (EEC) No 1768/89.

## 2. Normal value

- (5) Since Master Technologies did not sell any video cassettes on their domestic market during the investigation period (1 July to 31 December 1989), normal value was determined on the basis of constructed value of the models concerned. This constructed value was established on the basis of all costs, both fixed and variable, in Hong Kong, of materials and manufacture for the models to be exported to the Community, plus a reasonable amount for selling, administrative, other general expenses and profit.
- (6) As far as the costs of manufacture are concerned, part of the material necessary to assemble the finished video cassette was bought from a joint venture partly owned by the shareholders of Master Technologies and operating in the People's Republic of China. The transactions between this joint venture and Master Technologies were considered as being not in the ordinary course of trade since these companies were related in respect of their ownership. Accordingly, since the prices and costs were not comparable to those involved in transactions between parties which have no such link, it was deemed appropriate to determine this part of the cost of manufacture on the basis of the prices paid for the equivalent material by independent manufacturers of video cassettes in Hong Kong during the investigation period.
- (7) As far as selling, administrative and general expenses are concerned, these were calculated by reference to such expenses relating to sales of the like product to third countries as reported in the audited accounts of the company, since the Commission did not have at its disposal any information on such expenses incurred by other producers on their sales of video cassettes on the Hong Kong market during the investigation period and since, in the present case, these expenses were considered the equivalent of such domestic selling, general and administrative costs.

As far as profit is concerned, it was found appropriate to apply a profit rate of 8 % on turnover, since this rate was used in Regulation (EEC) No 1768/89 for the Hong Kong exporters and can still be regarded as the profit that Hong Kong companies can normally achieve on their domestic market.

The Council confirms these findings.

- (8) On this basis, normal value was established as follows for models E-120, E-180, E-240, and for the two qualities of tapes used by Master Technologies in the manufacturing process, namely high grade and extra high grade:

|                  | E-120    | E-180    | E-240    |
|------------------|----------|----------|----------|
| High grade       | ECU 1,36 | ECU 1,67 | ECU 1,99 |
| Extra high grade | ECU 1,53 | ECU 1,92 | ECU 2,32 |

## IV. AMENDMENT OF THE REVIEWED MEASURES

- (9) Since it was found that Master Technologies had not exported video cassettes to the Community, no export price could be established for the product under consideration and thus no dumping margin could be established.
- (10) However, it is obvious that, if the export price of the various models of video cassettes sold for export to the Community by Master Technologies at least equalled the above normal values for the corresponding models, these products would not be dumped.
- (11) In addition, it was considered not necessary to carry out a thorough injury investigation, since these normal values are less than the target prices determined for the Community industry and referred to in Regulation (EEC) No 1768/89; Indeed, these products should not be released for free circulation in the Community at a price less than these normal values.
- (12) In these circumstances, it was found that the anti-dumping duty to be imposed in respect of the imports in the Community of the said models of video cassettes by Master Technologies should not be an *ad valorem* duty, but a variable duty.
- (13) Accordingly, it is considered appropriate that Regulation (EEC) No 1768/89 should be amended and that Master Technologies be exempted from the definitive anti-dumping duty imposed on VHS video tapes in cassettes originating in Hong Kong in respect of the models E-120, E-180 and E-240, both high grade or extra high grade, in so far as these models will be subject to a duty equal to the difference between the normal value set out for each of these models under recital 8, and their net price, free-at-the-Community-frontier, before duty, payable by the first independent importer.

- (14) Master Technologies was informed of the essential facts and considerations on the basis of which the imposition of this anti-dumping duty was proposed, and was given an opportunity to comment on the proposal.
- (15) The complainants were also informed of the considerations and main facts on the basis of which it was intended that the Commission proposed to amend Regulation (EEC) No 1768/89 and were given an opportunity to comment on the proposal.
- (16) No comment was received from either Master Technologies or the complainants on the Commission proposal.

HAS ADOPTED THIS REGULATION:

*Article 1*

Article 1 (3) of Regulation (EEC) No 1768/89 is hereby replaced by the following:

'3. The duty specified in paragraph 2 (b) shall not apply to video tape in cassettes manufactured and sold for export to the Community by Swylinn Ltd and Wing Shing Cassette Ltd Hong Kong (additional Taric code: 8292)

The duty specified in paragraph 2 (b) shall not apply to video tape in cassettes in respect of models E-120, E-180 and E-240, both high grade or extra high grade, manufactured and sold for export to the Community by Master Technologies; these models shall instead be subject to an anti-dumping duty equal to the difference between the price specified below for each of the models concerned and the net price, free-at-Community-frontier, before duty for those models:

|                  | E-120                  | E-180                  | E-240                  |
|------------------|------------------------|------------------------|------------------------|
| High grade       | ECU 1,36<br>(8470) (*) | ECU 1,67<br>(8472) (*) | ECU 1,99<br>(8474) (*) |
| Extra high grade | ECU 1,53<br>(8471) (*) | ECU 1,92<br>(8473) (*) | ECU 2,32<br>(8475) (*) |

(\*) Additional Taric code.'

*Article 2*

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, 4 December 1990.

*For the Council*

*The President*

G. DE MICHELIS