

COMMISSION

COMMISSION DECISION

of 20 October 2006

terminating the anti-dumping proceeding concerning imports of recordable digital versatile discs (DVD+/-R) originating in the People's Republic of China, Hong Kong and Taiwan

(2006/713/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 Communities ⁽¹⁾ ('the basic Regulation'), and in particular Article 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

- (1) On 6 August 2005, the Commission announced by a notice published in the *Official Journal of the European Union* ⁽²⁾ the initiation of an anti-dumping proceeding with regard to imports into the Community of recordable digital versatile discs ('DVD+/-R') originating in the People's Republic of China ('PRC'), Hong Kong and Taiwan ('the countries concerned').
- (2) The proceeding was initiated as a result of a complaint lodged on 24 June 2005 by CECMA ('the complainant') on behalf of producers representing a major proportion, in this case more than 60 %, of the total Community production of DVD+/-R. The complaint contained evidence of dumping of DVD+/-R and of material injury resulting from it, which was considered sufficient to justify the initiation of a proceeding.

2. Parties concerned by the proceeding

- (3) The Commission officially advised the complainant, the complainant producers, other known Community producers, the exporting producers in the countries concerned, importers, distributors, retailers and consumer organisations known to be concerned, and representatives of the countries concerned of the opening of the proceeding.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁽²⁾ OJ C 192, 6.8.2005, p. 12.

- (4) In order to allow exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms to the exporting producers known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Fifteen companies requested MET pursuant to Article 2(7) of the basic Regulation or IT should the investigation establish that they did not meet the conditions for MET.
- (5) The Commission sent questionnaires to all parties known to be concerned, including all complainant producers, all other known Community producers, exporting producers in the countries concerned and importers, retailers and distributors. Questionnaires were also sent to exporting producers in Japan that was considered a replacement for Taiwan as potential analogue country to establish a normal value for exporting producers in the PRC to which MET might not be granted. The change of potential analogue country followed objections raised by interested parties, mainly relating to the fact that dumping had been found in the past for major Taiwanese exporters of a neighbouring and to an extent, substitutable product. Replies were received from twenty-two exporting producers in the countries concerned, all complainant producers, one other Community producer, eight unrelated importers, one distributor and seven retailers (one of whom is a combined wholesaler/retailer).
- (6) Due to the high number of replies from the PRC (nine groups of companies) and Taiwan (eleven companies), sampling was applied for these two countries, as envisaged in the notice of initiation. In accordance with Article 17 of the basic Regulation, the sample was based on the largest representative volume of exports which can reasonably be investigated within the time available. The samples selected consisted respectively of four Chinese exporting producers, representing 79 % of the export volume of the Chinese co-operating parties and five Taiwanese exporting producers, representing 97 % of the export volume of the Taiwanese cooperating parties. In accordance with Article 17(2) of the basic Regulation, the Chinese and Taiwanese authorities were consulted and raised no objection. Concerning Hong Kong, sampling was not necessary.
- (7) The Commission sought and verified all the information deemed necessary for a determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:
- (a) Community producers
- Computer Support Italcord s.r.l. (Milano, Italy)
 - Manufacturing Advanced Media (Mulhouse, France)
 - TDK Recording Media Europe (Luxembourg)
 - Sony DADC (Salzburg, Austria)
- (b) Exporting producers in Hong Kong
- UME Disc Ltd.
 - China Shing Manufacturing
 - MDA Technology Ltd.
 - Giant Base Technology Ltd.
 - Pop Hero Holdings Ltd.
 - Wealth Fair Investment Ltd.

- (c) Exporting producers in Taiwan
 - Prodisc Technology, Inc (Taipei, Taiwan)
 - Daxon Technology (Taipei, Taiwan)
 - (d) Unrelated importers and distributors
 - Verbatim Ltd (London, United Kingdom)
 - Maxell Europe Ltd (London, United Kingdom)
 - Philips Recordable Media (Wiesbaden, Germany)
 - Sony France S.A. (Paris, France)
 - Ingram Micro Distribution GmbH (München, Germany)
 - SK Kassetten GmbH & Co. KG (Neuenrade, Germany)
 - Intenso GmbH (Vechta, Germany)
 - Emtec International S.p.a. (Paris, France)
 - (e) Wholesaler/Retailer
 - Metro Group Buying GmbH
 - (f) Retailers
 - Carrefour Marchandises Internationales (Paris, France)
 - El Corte Inglés S.A. (Madrid, Spain)
 - FNAC S.A. (Paris, France)
 - (g) Producer in analogue country
 - Taiyo Yuden (Takasaki, Japan).
- (8) It is recalled that no provisional measures were imposed in the current investigation. All parties received a disclosure of the facts and considerations on which the decision not to impose provisional measures was based. All parties were granted a period within which they could make comments in relation to these disclosures.
- (9) Some interested parties submitted comments in writing. Those parties who requested were also granted an opportunity to be heard orally. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

3. Investigation Period

- (10) The investigation period of dumping and injury covered the period from 1 July 2004 to 30 June 2005 ('IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2002 to the end of the investigation period ('period considered').

4. Product concerned and like product

4.1. Product concerned

- (11) The product concerned is recordable digital versatile discs ('DVD+/-R') originating in the PRC, Hong Kong and Taiwan normally declared within CN code ex 8523 90 30 (CN code since 1 January 2006). This code covers products with a recording capacity exceeding 900 megabytes but not exceeding 18 gigabytes, other than erasable. This CN code is only given for information. The product concerned belongs to the recording media industry.
- (12) A DVD-R is an optical storage medium for digital data consisting of a polycarbonate disk, coated with single layers of dye. DVD+/-Rs consist normally of two 0,6 mm thick polycarbonate substrate of 120 mm or less, glued together. Although recording on such discs can be done in several steps, the recorded information can not be erased. The disk is an optical storage medium for digital data, music and video. Recording is realised by exposing the dye layer (recording dye) to an infrared laser beam in a DVD-R Recorder.
- (13) There are two different standards of DVD, namely DVD minus R ('DVD-R') and DVD plus R ('DVD+R'). Depending on what group of companies that originally developed the different standards, producers traditionally either supported the production of either DVD+R or DVD-R (For example, DVD-R is a product standard supported by a group labelled 'DVD Forum' which included *inter alia* the Japanese producer Panasonic). Nowadays, most producers are manufacturing and marketing both standards and almost all DVD-players are able to play both DVD-R and DVD+R.
- (14) DVD+/-Rs can be distinguished according to the appearance, the type of data stored, the storage capacity, the reflective metal layer and whether or not the DVD+/-R is printed upon. Furthermore, there are different kinds of recording speeds from 4× to higher speed DVD+/-Rs (8×, 16× or higher).
- (15) The product is sold in different quantities. DVD+/-Rs come on the market in different types of packaging, partly in so called 'slim/jewel-cases' containing 1 DVD+/-R, so called 'cake boxes' of 10 to 100 DVD+/-Rs, so called 'shrink/wrapped spindles' of 10 to 100 DVD+/-Rs and envelopes containing DVD+/-R packed in cellophane, carton boxes etc.
- (16) The usable capacity for single-layer DVD+/-R is 4,7 gigabyte ('GB'), whereas the double-sided layer of DVD+/-Rs is doubling the data storage capacity to 9,4 GB.
- (17) Although the quality of the various types of DVD+/-Rs sold differs, this does not entail any significant differences in the basic physical and technical characteristics of the different types and standards. Moreover, the investigation has shown that all DVD+/-Rs have the same end-use. They are therefore considered as one product for the purpose of this investigation.

4.2. Like product

- (18) The investigation has shown that there were no differences in the basic physical and technical characteristics and uses between the product concerned and the DVD+/-R's
 - produced and sold domestically in the countries concerned,
 - produced by the complainant producers and other Community producers and sold on the Community market,
 - produced and sold on the domestic market in the analogue country (Japan) for the purpose of establishing the normal value with respect to imports from the PRC.

- (19) It is therefore concluded that all types of DVD+/-Rs form one product and are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

B. DUMPING, INJURY AND CAUSATION

- (20) The investigation established the existence of dumping and injury resulting from it. However, given the conclusions as set out below, it is not necessary to detail these findings.

C. COMMUNITY INTEREST

5. General remarks

- (21) In accordance with Article 21 of the basic Regulation it was examined whether, despite the conclusion on injurious dumping, compelling reasons exist for concluding that it is not in the Community interest to adopt anti-dumping measures in this particular case. The likely impact of possible measures on all parties involved as well as the likely consequences of not taking measures were considered.
- (22) The definition of Community production and Community industry has followed the criteria set out in Articles 4(1) and 5(4) of the basic Regulation.
- (23) In this case, the following related companies have been considered to constitute the Community industry:
- Computer Support Italcord s.r.l. ('CSI')
 - Manufacturing Advanced Media ('MAME').
- (24) In the complaint, one more company was also mentioned as complainant. However, it was found that this company imported from the countries concerned a major portion, as compared to the total production, of the product concerned during the IP. These imports had occurred over a sustained period of time. Furthermore, this company was found to have the core of activities located outside the Community. Therefore, in accordance with Article 4(1)(a) of the basic Regulation, this company has been excluded from the definition of the Community industry.
- (25) Moreover, one additional producer also fully cooperated. However, it was found that also this company imported from the countries concerned a major portion, as compared to the total production, of the product concerned during the IP. These imports were found to have taken place over a sustained period of time. As detailed in recital 24, also this company, as part of a company group, has its core activities located outside the Community. Therefore, in accordance with Article 4(1)(a) of the basic Regulation, this company has been also excluded from the definition of the Community industry.
- (26) Finally, further to the liquidation of one of the two remaining companies after the end of the investigation period, it was considered whether this company should be excluded from the definition of the Community industry. However, in view of the conclusions reached below, it was not considered necessary to take a decision on this issue.
- (27) Therefore, only CSI and MAME, whose collective output constitutes 88 % of the total estimated Community production, constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

6. Interest of the Community industry, unrelated importers, users and consumers

- (28) Based on information gathered from the interested parties, the evolution of total consumption in the Community and market shares of the Community industry during the period considered have developed as follows below:

EU consumption

Thousands of units	2002	2003	2004	IP
Total EU consumption	10 570	602 390	1 575 562	1 687 509
Index (2002 = 100)	100	5 700	14 906	15 965

Total EU consumption of the product concerned increased massively by almost 16 000 percentage points.

Market shares on the Community market

	2002	2003	2004	IP
Community Industry	0 %	0,4 %	0,6 %	0,8 %
Cooperating producers excluded from the definition of the Community production (see recitals (24) to (25) above)	6,3 %	1,0 %	3,1 %	5,1 %
Other non-cooperating producers in the Community still in operation (estimation)	0 %	0,5 %	0,2 %	0,2 %
Imports from the countries concerned	93,7 %	87,6 %	89,0 %	86,1 %
Imports from other third countries	0 %	10,5 %	7,1 %	7,8 %

- (29) On the basis of the facts provided above, it appears that the Community industry's share of the Community market started from 0 % in 2000 but still only reached 0,8 % in the IP. The market share of imports from the countries concerned decreased in the period considered, but was still at a level of around 87 % during the IP. Their loss of market share corresponded broadly to the increase of imports from third countries.
- (30) The complainant has argued that some of the non-cooperating producers that have ceased their production during or after the end of the IP could resume their production should measures be introduced. However, in the absence of information directly from these non-cooperating producers that would confirm these alleged intentions, or other evidence substantiating the allegation, this argument has to be rejected. It is also noted that even if these companies were to resume production, their production would in all likelihood not be very substantial as compared to the very important volumes from the countries concerned.
- (31) Moreover, and as seen from above, it appears evident that the production of DVD+/-Rs by the Community industry started up rather late as compared to the exporters in the countries concerned. It is highly unlikely that the imposition of measures would enable the Community industry to increase their prices to reach a level of profitability which would allow them to survive or alternatively, to increase their sales to lower the cost of production and thereby to benefit from economies of scale. The developments during the period considered, show that the Community industry has never been able to gain a substantial market share and the loss of market share by the countries concerned was almost entirely taken over by imports from third countries. Furthermore, two out of the four cooperating companies gave up their interests as Community producers and became importers of DVD+/-Rs from the countries concerned. Under these circumstances, it is highly unlikely that the remaining Community industry would be viable and could benefit from the imposition of anti-dumping measures.

- (32) All importers, distributors and most of the retailers have argued that, should measures be introduced, the resulting cost increase would have to be borne by one or several levels in the distribution chain (thereby significantly decreasing their respective margins), or passed on to the consumers (thereby perhaps even affecting the overall consumption of the DVD+/-Rs negatively), or shared between both.
- (33) The likely reaction of importers, distributors or retailers to the cost increase following the imposition of measures will depend on the situation of each Member State. In some Member States, the demand for DVD+/-Rs is already under pressure from 'special levies' on recordable media (a tax which increases the retail price significantly for the consumer). In this case, the consumers of DVD +/-Rs would possibly not be ready to pay more as a result of anti-dumping duties as the retail price is already perceived as high. The full cost of measures would in all likelihood therefore have to be borne by the distribution chain in order to avoid that consumers turn increasingly to other means of media storages such as hard discs and flash memory sticks. As the mark-up of the importers/wholesalers in these countries can be estimated at around 4 %, the imposition of anti-dumping duties would significantly decrease the already small margin.
- (34) Adversely, in Member States with the lowest (or absence of) special levies, it is more likely that a substantial part of the cost increase is passed on to consumers. Therefore, the relative effect of anti-dumping measures would be the greatest there, since the price increase would be relatively higher. As a result, consumption might decrease, as consumers would have an incentive to turn to substitution products.
- (35) It follows from the above that the price strategy of the importers, distributors and retailers will vary depending on the situation in each Member State. Nonetheless, it is apparent that all of them will suffer from the introduction of anti-dumping measures, either by way of decreased margins or by way of decreased sales volumes. Similarly, to the extent that the cost increase of anti-dumping measures is passed on the consumers, the latter will also be negatively affected.
- (36) Many interested parties stated that the effect of any measures on the Community industry should be set against the risk that the consumption of DVD+/-Rs would in any event decrease in favour of other media storage products such as hard discs on DVD-recorders and flash-memory sticks. Indeed, the investigation proved that the technological development in the market of media storage products is fast and that the new media storage products have the advantage of bigger storage capacity which, in the case of flash memory sticks, is combined with small sizes.
- (37) It has been further argued that the situation of the Community industry would be the result of abusive behaviour by certain dominant exporting producers, consisting in pursuing a strategy of below-cost prices which would have prevented the Community industry from building up any significant market presence. Firstly, it has to be noted that a corresponding decision or investigation concerning an abuse of dominance under the EU competition rules does not exist, nor has the complainant pointed to any respective decision under national competition rules. Secondly, the investigation has revealed a large number of operators in Europe and the world on the relevant product market. Within the purview of this investigation it has not been demonstrated that any of the operators, solely or jointly, holds a market share significant enough that this could likely be considered to constitute a dominant position. In addition, neither has it been demonstrated that any of the companies enjoys such economic strength as to impede effective competition. Thirdly, there is no indication of any significant loss-making with the exporters concerned suggesting that the exporters pursued a strategy of selling below-cost prices. The argument was therefore rejected.

- (38) Moreover, while Article 21 of the basic Regulation indeed refers to the need to give special consideration to the need to remedy the trade distorting effects of injurious dumping and to restore effective competition, this particular provision has to be seen in the overall framework of the Community interest test as laid down in the aforementioned Article. Thus the effects of imposing measures or not imposing measures on all parties concerned have to be examined and balanced. In this respect it should be noted that there are a number of other exporters and producers in competition on the world market and to a certain extent also on the Community market. Even in a medium term perspective the Community industry would be unlikely to take full benefit of possible measures given that it is to be expected that other third countries would considerably increase their part on the Community market.
- (39) Taking into account the relative maturity of the DVD+/-Rs market, the prospect of Community industry to become a strong player in the short or medium term would appear quite remote in particular in terms of market share, production capacity or technology, if measures are imposed. Otherwise, the imposition of measures would concern nearly 90 % of the EU consumption of the product concerned and would be detrimental to importers, distributors, retailers and consumers. In such circumstances, the imposition of anti-dumping measures would be disproportionate.
- (40) On the basis of the above, it can be concluded that the imposition of measures would have substantial negative effects on importers, distributors, retailers and consumers of the product concerned and that the Community industry is unlikely to obtain any significant benefits. It is therefore considered that the imposition of measures would be disproportionate and against the Community interest.

7. Conclusion of Community Interest

- (41) In view of the above, compelling reasons exist on Community interest grounds not to adopt anti-dumping measures as regards imports of DVD+/-Rs from the countries concerned.

D. TERMINATION OF THE PROCEEDING

- (42) Under these circumstances, the proceeding with regard to imports of DVD+/-Rs from the countries concerned should be terminated on the grounds of Community interest.
- (43) The complainant and all other interested parties were informed of the essential facts and considerations on the basis of which the Commission intends to terminate this proceeding. Subsequently, the complainants made known their views which however were not of a nature to change the above conclusions,

HAS DECIDED AS FOLLOWS:

Sole Article

The anti-dumping proceeding concerning imports of recordable digital versatile discs ('DVD+/-R') originating in the People's Republic of China, Hong Kong and Taiwan, falling within CN Code ex 8523 90 30 (CN code since 1 January 2006) is hereby terminated.

Done at Brussels, 20 October 2006.

For the Commission
Peter MANDELSON
Member of the Commission