



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.04.1999  
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Amended proposal for a

**COUNCIL (EC) REGULATION**

**imposing a definitive anti-dumping duty on imports of gas-fuelled, non-refillable  
pocket flint lighters originating in Japan**

(presented by the Commission pursuant to Article 189 a (2)  
of the EC-Treaty)

## **EXPLANATORY MEMORANDUM**

- (1) Attached is an amended proposal for a Council Regulation maintaining the 1991 definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in Japan.
- (2) The review investigation was initiated on 30 November 1996 under Article 11(2) and 11(3) of the Basic Anti-dumping Regulation. In accordance with Article 11(2) the measure remains in force pending the outcome thereof.
- (3) The co-operating interested parties were informed of the essential facts and considerations on the basis of which the Commission services intended to recommend that the definitive anti-dumping duty be maintained at its current level. Subsequent to this disclosure no comments were received which could alter these facts and considerations.
- (4) The Anti-Dumping Advisory Committee was consulted in April 1998. The proposal of the Commission services did not obtain a favourable opinion of an absolute majority. Six Member States (Belgium, France, Greece, the Netherlands, Portugal and Spain) voted in favour and one did not express an opinion.
- (5) The consultation was followed by an exchange of views in writing on the issues raised by certain of the Member States that had not voted in favour of the proposal of the Commission services.
- (6) The proposal to maintain the definitive anti-dumping duty is essentially based on the existence of actual dumping, of huge idle capacity at the exporter's plant in Japan, and the likelihood that the Community industry would suffer serious injury if that capacity were used for exports of the products at dumped prices to the European Community, especially if the prices of increased volumes of such exports undercut the Community industry's prices by the 43 % established for the investigation period. In this regard, the existence of a plant in Mexico, developed by a subsidiary of the exporter almost immediately after the imposition of the measure under review, and the subsequent imposition of an anti-dumping measure (in force until March 2002) on imports originating in Mexico, were also taken into account.

In this context, the continued existence in force of that anti-dumping measure is a highly significant factor in concluding that there is a strong likelihood of recurrence of injurious dumping of Japanese lighters should the measure on imports originating in Japan lapse.

- (7) Thus it is now proposed that any duty imposed on Japanese imports should lapse at the same time as the measure concerning imports originating in Mexico, i.e. in less than 3 years.

This approach is also compatible with the Judgment of the Court of First Instance of 8 July 1998 (Case T-232/95, Committee of European Copier Manufacturers (CECOM) v. Council of the European Union), which allows a reduction of the duration of the maintained measure if, as in the present case, the investigation exceeded the normal duration provided for in Article 11(5) of the Basic Regulation.

Amended proposal for a

## **COUNCIL (EC) REGULATION**

### **imposing a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in Japan**

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<sup>1</sup>, and in particular Articles 11 (2) and (3) thereof,

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

Whereas:

#### **A. PROCEDURE**

##### **1. Measures in force**

- (1) By Council Regulation (EEC) No 3433/91<sup>2</sup>, hereinafter referred to as the "definitive duty Regulation", the Council imposed a definitive anti-dumping duty on imports of gas fuelled, non-refillable pocket flint lighters originating in Japan, the People's Republic of China, the Republic of Korea and Thailand. As regards Japan, the duty rate was set at 35.7 %.
- (2) The definitive duty Regulation was amended with respect to China in 1995<sup>3</sup>. In as far as Thailand is concerned, it was replaced by Council Regulation (EC) No 423/97 in March 1997<sup>4</sup>.

##### **2. Initiation of a review**

- (3) In May 1996 the Commission published a notice of the impending expiry of the measures in force concerning Japan and the Republic of Korea<sup>5</sup>. After this publication, the Commission received a request for a review pursuant to

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<sup>1</sup> OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulations (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1) and (EC) No 905/98 (OJ L 128, 30. 4. 1998, p. 18).

<sup>2</sup> OJ L 326, 28. 11. 1991, p. 1.

<sup>3</sup> Council Regulation (EC) No 1006/95, OJ L 101, 4. 5. 1995, p. 38

<sup>4</sup> OJ L 65, 6. 3. 1997, p. 1.

<sup>5</sup> OJ C 155, 30. 5. 1996, p. 6.

Article 11(2) of Council Regulation (EC) No 384/96<sup>6</sup>, hereinafter referred to as the "Basic Regulation", with regard to imports of gas-fuelled, non-refillable pocket flint lighters originating in Japan, lodged by the European Federation of Lighter Manufacturers on behalf of BIC S.A. and Flamagas S.A.. Subsequently this request received the support of Swedish Match S.A.. BIC S.A., Flamagas S.A. and Swedish Match S.A. represent almost the totality of Community production of the product concerned.

- (4) The request contained sufficient *prima facie* evidence that the expiry of measures would be likely to result in a recurrence of dumped imports causing injury. Evidence of the presence of under-utilised capacity in Japan as well as evidence that imports from Japan would have an immediate depressing effect on the prices of the Community producers supported this alleged likelihood. It was further alleged that this situation would exacerbate the continuing vulnerability of the Community industry.
- (5) Therefore, the Commission announced the review of the definitive duty Regulation in respect of Japan<sup>7</sup>. This review was opened in accordance with Articles 11(2) and 11(3) of the Basic Regulation, as an interim review also seemed to be appropriate. As regards Korea, the measure was allowed to expire<sup>8</sup>.

### **3. Review investigation**

- (6) The Commission officially advised the only producer in the exporting country known to be concerned, Tokai Corporation, its related importer in the Community, Tokai Seiki GmbH, the representatives of the exporting country and the complainants.
- (7) The parties directly concerned were given the opportunity to make their views known in writing and to request a hearing. One of the complainants requested and was granted a hearing.
- (8) The Commission sent questionnaires to all parties known to be concerned and received detailed information from the complainant Community producers, their subsidiaries, the Japanese exporter and its related importer located in the Community.
- (9) The Commission sought and verified all information it deemed necessary for the purpose of the investigation and carried out verifications at the premises of the following companies:

#### *Community producers and their subsidiaries*

- BIC S.A. (the BIC group), Clichy, France,
- BIC BJ 75, Redon, France,

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<sup>6</sup> OJ L 56, 6. 3. 1996, p.1.

<sup>7</sup> OJ C 361, 30. 11. 1996, p.3.

<sup>8</sup> OJ C 360 of 29. 11. 1996, p. 2.

- BIC Deutschland GmbH & Co., Ettlingen, Germany,
- BIRO BIC Ltd, London, UK,
- Laforest BIC S.A., Tarragona, Spain,
- Swedish Match Lighters B.V., Assen, Netherlands,
- Swedish Match Lighters (including Cricket SA), Rillieux-la-Pape, France,
- Arnold André GmbH & Co., KG, Bünde, Germany,
- Flamagas S.A., Barcelona and Llinas del Valle, Spain.

*Producer in the country of origin*

- Tokai Corporation Japan, Tokyo, Japan.
- (10) For the purpose of the dumping, injury and Community interest determinations, the geographical scope of the investigation was the Community of 15.
- (11) The investigation of dumping covered the period from 1 January 1996 to 30 September 1996 (hereinafter referred to as the ‘investigation period’). The examination of injury covered the period from 1992 up to the end of the investigation period.
- (12) The investigation exceeded the normal time period provided for in Article 11(5) of the Basic Regulation. This was due to the fact that the Commission considered that the data gathered and examined initially were not sufficient to be used as a basis for a new anti-dumping duty and that, for an accurate assessment of the likelihood of recurrence of injurious dumping, a verification visit to the exporter had to be carried out at an advanced stage of the investigation. **In view thereof and taking** into account that the anti-dumping measure under review remained in force pending the investigation, **it appears opportune that** any measure maintained or imposed as a result of the investigation remain in force for a shorter period of time than foreseen by the Basic **Regulation with a view to balancing the rights and obligations of all co-operating parties.**

## **B. PRODUCT CONCERNED AND LIKE PRODUCT**

### *1. Product concerned*

- (13) The products under consideration are gas-fuelled, non-refillable pocket flint lighters (hereinafter referred to as "disposable flint lighters") falling within CN code *ex* 9613 10 00.
- Request for inclusion of other lighters*
- (14) It should be recalled in this respect that there are other disposable lighters on the market (so called electronic or piezo lighters) which are not subject to

anti-dumping measures. Two months after the opening of the review investigation, Swedish Match S.A. made a request to extend the scope of this review investigation to electronic (or piezo) lighters arguing that gas-fuelled, non-refillable pocket flint lighters and gas-fuelled, non-refillable electronic lighters (hereinafter "electronic lighters") were forming one single category of product.

- (15) As regards this request, it should be recalled that the proceeding - opened in April 1990 - concerns gas-fuelled, non-refillable pocket flint lighters and that it has already been assessed<sup>9</sup> that the (basic) technical characteristics of electronic lighters were quite different from those of the disposable flint lighters currently subject to anti-dumping duties. The request did not contain any evidence showing that this conclusion was no longer appropriate. In particular, it did not show any changes in the (basic) technical characteristics, such as the ignition system, of either type of lighters, which could have invalidated the findings of the definitive duty Regulation.
- (16) As the evidence that was presented was insufficient to justify the inclusion of electronic lighters in the investigation, and the request was made belatedly by a party that had supported the request for a review without reservation, the request for an extension of the scope of the review investigation could not be granted.

*- Different sizes and models*

- (17) Finally, it should be noted that the product under consideration is manufactured in different sizes and models. All these disposable flint lighters have the same basic technical characteristics and the same basic application, and perform the same function. As in previous investigations, the whole range of models of disposable flint lighters was, therefore, considered as forming one single category of product.

**2. Like product**

- (18) As regards the disposable flint lighters produced and sold domestically in Japan, the investigation showed that such products were in all respects identical to, or closely resembling, those exported to the Community from the country in question.
- (19) The investigation also established that the disposable flint lighters imported from the country concerned, on the one hand, and those produced by the Community industry and sold in the Community market, on the other hand, possess similar basic technical characteristics and are intended for the same use. The disposable flint lighters produced and sold by the Community industry should therefore be regarded as like products to those imported from the country concerned.

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<sup>9</sup> See in particular Council Regulation (EEC) No 3433/91 which confirms the provisional findings laid down in recital 11 to Council Regulation (EEC) 1386/91 (OJ L 133, 28. 5. 1991, p. 20).

- (20) Accordingly, it was concluded that the disposable flint lighters produced and sold in the Community, as well as those produced and sold in Japan should be regarded as like products, within the meaning of Article 1(4) of the Basic Regulation, to those exported to the Community from Japan.

## **C. DUMPING**

### ***1. Normal value***

- (21) As in the original investigation, Tokai Corporation was the sole co-operating exporting Japanese producer. During the investigation period it sold 20 different models of the product concerned on its domestic market. Only two of those models were exported to the Community.
- (22) It was found that this exporter's overall domestic sales of the product concerned during the investigation period were representative since the total volume of such sales exceeded the threshold of 5 % of export sales provided for in Article 2(2) of the Basic Regulation. Domestic sales of each of the two product models exported to the Community were also representative because they met the same 5 % criterion.
- (23) In accordance with Article 2(4) of the Basic Regulation the Commission also had to determine whether domestic sales of each model were made in the ordinary course of trade by looking at the proportion of profitable sales to total sales. The investigation showed that all domestic sales made during the investigation period were profitable. Consequently, normal value was based on the average weighted sales price of all domestic transactions of the two models in question.

### ***2. Export price***

- (24) The totality of the export sales made by the exporter concerned during the investigation period was made to a related company in the Community. The export prices were therefore constructed, in accordance with Article 2(9) of the Basic Regulation, on the basis of resale prices to the first independent buyer adjusted to take account of all costs incurred between importation and resale including customs and anti-dumping duties and a 5 % profit margin. The latter was established on the basis of the profit margins considered reasonable in this business sector for unrelated importers.
- (25) Where cost allocations for importers' general administration and selling expenses were necessary in the construction of export prices, these were made on the basis of turnover.

### ***3. Comparison and dumping margin***

- (26) In accordance with Articles 2(10) and 2(11) of the Basic Regulation, the weighted average normal value per model was compared with the weighted average export price per model, at ex-factory level and at the same level of trade. For the purpose of a fair comparison, adjustments were granted for those differences affecting price comparability for which satisfactory



evidence was supplied. Thus, adjustments were made in respect of transport, insurance, credit and packaging.

- (27) The comparison of normal value and export prices showed the existence of dumping. The dumping margin expressed as a percentage of the CIF Community frontier value of the imports was found to be 208.1 %.

#### **D. COMMUNITY INDUSTRY**

- (28) In the present investigation, Tokai Seiki GmbH, a subsidiary of Tokai Corporation, a producer of the product concerned in the Community and the only co-operating importer in the Community of disposable flint lighters originating in Japan, was not included in the definition of the Community industry in accordance with Art. 4 (1) (a) of the Basic Regulation as it was the sole importer of the product under consideration and a 100 % subsidiary of Tokai Corporation Japan.
- (29) Disregarding Tokai Seiki GmbH's production, the three Community producers which co-operated with the present investigation (including their subsidiaries) represented almost the totality of Community production of disposable flint lighters. Consequently, these three co-operating Community producers constitute the Community industry within the meaning of Article 4 of the Basic Regulation.

#### **E. INJURY**

##### ***1. Preliminary remark***

- (30) In the definitive duty Regulation it was concluded that “the cumulated dumped imports from Japan, the People’s Republic of China, the Republic of Korea and Thailand had caused material injury to the Community industry”<sup>10</sup>. As meanwhile the measure concerning the Republic of Korea was allowed to lapse and the measures concerning the People’s Republic of China and Thailand have been amended further to interim reviews<sup>11</sup>, the actual impact of imports originating in Japan, as well as the possible impact seen from the angle of recurrence, had to be examined in isolation.

##### ***2. Consumption in the Community***

- (31) In order to calculate total apparent consumption of disposable flint lighters in the Community, Community producers’ sales in the Community were added to the total imports originating in third countries, as declared under CN code *ex* 9613 10 00. An adjustment was made as regards imports originating in China for the years 1994 and 1995<sup>12</sup>. On this basis annual apparent consumption in the Community increased by 27 %, from 617.7 million units in 1992 to 785.4 million units in 1996.

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<sup>10</sup> Recital 15 to Council Regulation (EEC) No 3433/91 referred to above.

<sup>11</sup> See recital 2.

<sup>12</sup> See recital 46 to Council Regulation (EC) No 423/97 referred to above.

### 3. *Factors relating to imports originating in Japan*

#### *Volume and market share*

- (32) From 1992 to the investigation period, imports from Japan plummeted to very low levels in absolute terms. The indexed import figures were 100 in 1992, 150 in 1993, 33 in 1994 and 83 in 1995, while sales of such imports during the investigation period represent but 6.1. The market share of imports from Japan decreased from around 0.5 % in 1992 and 1993 to 0.06 % during the investigation period. The anti-dumping measure under review therefore effectively limited the impact of dumping of imports of disposable flint lighters originating in Japan.
- (33) In this context it should, however, be noted that a considerable portion of overall imports was dumped. In particular, imports from Mexico, the Philippines and Thailand should be mentioned in this regard<sup>13</sup>.

#### *Price undercutting*

- (34) The Commission calculated to what extent the prices charged by the exporter in the Community market undercut the price charged by the Community producers. As all sales made by the exporter were made to its related importer, this comparison was made at the level of sales to the first independent customer, and on the basis of the related importer's and the Community producers' weighted average selling prices free of all rebates and taxes. The price charged by the related importer was not adjusted for anti-dumping duties paid.
- (35) The comparison was made at the level of prices to wholesalers (thus excluding sales to retailers and the advertising sector). Moreover, the price comparison was made for naked lighters (including, however, the lighters the exporter presented as 'wrapped') as the exporter had not exported any printed or sleeved lighters during the investigation period.
- (36) As in the original investigation and in accordance with Article 11(9) of the Basic Regulation, the price undercutting calculation was made for lighters with a similar gas content<sup>14</sup>.
- (37) On this basis it was found that the average price of the imported products undercut the weighted average price of the Community producers by 22.9 % during the investigation period. This is to be compared with the average undercutting of 11.5 % found in the original investigation. It should therefore be concluded that the exporter's undercutting level has increased, despite the upward effect the anti-dumping duty of 35.7 % must have had on the price charged by the related importer.

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<sup>13</sup> See Council Regulation (EC) No 423/97 referred to above.

<sup>14</sup> See recital 13 to Council Regulation (EEC) No 3433/91 referred to above.

#### 4. *Situation of the Community industry*

##### *Production*

- (38) From 1992 to 1996 production by the Community industry increased by 28 %.

##### *Capacity and Utilisation of capacity*

- (39) The capacity utilisation rate increased from 66 % in 1992 to 73 % in 1994, to drop to 71 % during the investigation period. This drop coincided, however, with an increase in capacity. Although an increase in capacity of almost 25 % was reported, the increases in capacity are quite recent as from 1992 to 1994 capacity did not increase at any material rate.

##### *Sales volume*

- (40) Sales in units in the Community market by the Community industry increased by 33 % from 1992 to the investigation period.

##### *Market share*

- (41) In a growing market, the market share of the Community industry dropped rather steadily from 66.1 % in 1992 to 46.8 % in 1995, after which it increased somewhat to 53.6 % during the investigation period. This market share is still somewhat lower than the 1990 market share of 57.3 %<sup>15</sup> but shows that the Community industry is beginning to recover from the effects of dumped imports.

##### *Price evolution and total sales value*

- (42) It was established that weighted average sales prices of the Community industry had dropped by almost 8 % from 1992 to the investigation period. The favourable development of sales volume was therefore not fully reflected in terms of turnover: the value of sales in the Community market increased by only 23 %.
- (43) The lighter market is known to be very price sensitive. This means that faced with low priced dumped imports, the Community industry is either forced to lower its prices in order to try to maintain market share, production level and capacity utilisation, or set to lose market share if it tries to maintain its prices.

##### *Profitability*

- (44) After several years of losses, the Community industry's return on sales became slightly positive in 1991 and deteriorated somewhat in 1992<sup>16</sup>.

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<sup>15</sup> See recital 48 to Council Regulation (EC) No 423/97 referred to above.

<sup>16</sup> See recital 55 to Council Regulation (EC) No 423/97 referred to above.

- (45) For the present investigation 1992 was taken as the basis for comparison. After a further deterioration in 1993, the Community industry's financial results have steadily improved: compared to 1992, the profit rates more than doubled in 1994 and more than tripled in the investigation period.
- (46) Nevertheless, the data supplied by the Community industry, which for this purpose did not include one of the complainants given that it did not give an admissible reply on profitability, show that since 1992 its overall financial performance continued to be below the target set as a reasonable profit for this industry in the definitive duty Regulation<sup>17</sup>. In fact, profits in 1992 and 1993 were very small and, although in the following years an improvement was noticeable, profits were less than half the non-injurious level set.

#### *Stocks*

- (47) The Community industry did not build up any significant stocks. It is usual practice in this sector to stop production if stocks become too big because of the security risks of stocking lighters containing gas for a long period of time. Moreover, as rationalisation efforts have been made the overall stocks at the end of the investigation period were some thirty percent smaller than those at the end of 1992.

#### *Employment*

- (48) From 1992 to the investigation period, employment in the Community industry was stable from 1992 to 1994 and increased by some 17 % since 1995. While this could be said to be a sign of recovery, it should be noted that the employment figure for 1992 was at its lowest level and had fallen by 13 % since 1989<sup>18</sup>. It was noted that a considerable portion of the expansion pertains to the sales and administrative segment rather than to production.

#### *Exports*

- (49) The Community industry performed well in export markets. Its sales in units steadily increased from 1992 to the investigation period. Over this period export sales, which represent approximately 60 % of the Community industry's overall production, increased 69 %.

### **5. Conclusion**

- (50) The situation of the Community industry has improved in recent years due to an increase of their sales in both the Community market and third countries. This development coincided with the imposition of several anti-dumping duties.
- (51) The increase in sales in the Community market is most probably due to both the growth of consumption and, to a lesser extent, to the beneficial effects of anti-dumping measures taken by the Community.

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<sup>17</sup> Recital 17 to Council Regulation (EEC) No 3433/91 referred to above.

<sup>18</sup> See recital 49 to Council Regulation (EC) No 1006/95 referred to above.

- (52) The downward trend of the market share of the Community industry was reversed since 1995, but its 53.6 % market share during the investigation period is still smaller than the 1992 one.
- (53) The increase in apparent consumption and the fact that anti-dumping measures were imposed, should normally have had an upward effect on prices in the Community market. Nevertheless, the prices of the Community industry were found to have decreased by 8 %.
- (54) Sales by the Community industry in the Community market proved more profitable during the investigation period than in e.g. 1992. However, the prices charged by the exporter in the Community market still undercut the Community industry's prices after application of the anti-dumping duty and the levels of profitability were still much lower than the non-injurious level fixed in the definitive duty Regulation.
- (55) In the light of the above, it is considered that the Community industry continues to suffer injury, notably in terms of profitability and the growth of market share. As the market share of imports of disposable flint lighters originating in Japan was very small, it was not possible to establish a causal link between the dumped Japanese imports and this injury. The injury caused by these imports is therefore considered negligible or, in any case, not material.

## **F. LIKELIHOOD OF RECURRENCE OF INJURIOUS DUMPING**

### ***1. Introduction***

- (56) The Community industry requested that the definitive duty Regulation be reviewed arguing that there was a likelihood of recurrence of injurious dumping. In order to make a determination on this point, a number of factors were considered, in particular the exporter's group behaviour, the availability of unused capacity at the exporter's plant in Japan, the existence of a price undertaking with respect to exports by a company belonging to the exporter's group and the price the exporter might charge if the duty were allowed to expire. In addition to the examination of the position of the Community industry, the impact that resumed exports from Japan would be likely to have on the Community industry, the existence of dumping practices and the evolution of the share of overall imports in the Community market were examined.

### ***2. Exporter's group behaviour***

- (57) In recent years, only small quantities of disposable flint lighters were imported from Japan and sold on the Community market, especially when compared to imports from several other third countries (primarily China, Mexico, the Philippines and Thailand) whose prices were found to be at dumped levels. However, the low level of imports originating in Japan has to be considered in the light of the Tokai group's behaviour.

- (58) The sole exporter in the investigation concerning, *inter alia*, imports originating in Mexico - further to which definitive anti-dumping measures were imposed in March 1997 - was a fully owned and controlled subsidiary of the Tokai group developed after the imposition of anti-dumping measures on disposable flint lighters originating in Japan<sup>19</sup>. The import figures show that imports from Mexico have simply replaced those produced (and exported) by Tokai Corporation at its Japanese plant, after the imposition of measures on the latter in 1991. Indeed, the imported quantities of lighters originating in Mexico are similar to the quantities that Tokai Corporation used to deliver to the Community market from Japan prior to the imposition of the 1991 measure. Moreover, it should be recalled that Tokai Corporation started a downward price trend by selling Japanese lighters at dumped prices in the late 1980s. This trend was subsequently reinforced by dumping practices of other Asian producers and its resumption of dumping through its subsidiary set up in Mexico.
- (59) In the light of the above, the low level of Japanese imports during the investigation period cannot lead to the conclusion that these developments, which occurred after the imposition of measures in 1991, are the result of normal economic behaviour of an exporting producer, i.e. behaviour independent of the measures subject to review. As they are, in fact, the result of an apparent strategy of the Tokai group, there is clearly a risk that Tokai would decide to resume exporting disposable flint lighters to the Community market from Japan should measures be allowed to lapse.
- (60) It is therefore considered appropriate to take into account that, as of 7 March 1997, definitive anti-dumping duties were imposed on imports of disposable flint lighters originating in Mexico, the Philippines and Thailand<sup>20</sup> and that the Mexican exporter, currently subject to anti-dumping measures, is a subsidiary of the Japanese exporter, when examining what is likely to happen if the existing measure were allowed to lapse.

### 3. *Japanese production capacity*

- (61) From 1992 to the investigation period, the exporter's production capacity decreased by 54 %. However, in addition to the decrease of production capacity, the utilisation rate (expressed in percent) of its remaining capacity also decreased by 38 % from 1992 to the investigation period.
- (62) During the investigation period, unused capacity at the exporter's Japanese plant accounted for a bigger quantity than the 56.6 million disposable flint lighters Tokai Corporation exported from Japan in 1989 (i.e. the investigation period of the original investigation). It was also established that, from 1992 to the investigation period, the unused capacity had been rather stable in absolute terms, given the concomitant decreases of production capacity and the capacity utilisation rate.

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<sup>19</sup> See recitals 9 and 36 to Regulation (EC) No. 423/97 referred to above.

<sup>20</sup> Council Regulation (EC) No 423/97 referred to above.

#### **4. *Price undertaking applicable to another group company***

- (63) The point should be made that, after the imposition of the measure under review, the exporter shifted the production of disposable flint lighters destined for export to the Community market to Mexico and subsequently offered a price undertaking in respect of imports originating in that country when anti-dumping measures on these imports were unavoidable in March 1997.
- (64) The lapse of the existing measure could therefore bring about sourcing of production for the Community market in Japan, given that the price undertaking does not apply to imports from that country and that, even without moving production lines from Mexico to Japan, the exporter disposed of sufficient freely disposable capacity at its Japanese plant to supply the Community market with a quantity higher than its 1989 exports. This may in particular occur if the exporter would wish to be able to charge lower prices on the Community market than allowed for imported products originating in Mexico.

#### **5. *Continuation of dumping and price the exporter might charge***

- (65) As stated above, during the investigation period, imports of disposable flint lighters originating in Japan continued to be dumped. As the imported products were sold at prices which were significantly more dumped than in the original investigation it appears likely that dumping will continue.
- (66) Despite the application of the anti-dumping duty, undercutting of the average unit price charged by the Community producers was still significant (22.9 %) during the investigation period. If the anti-dumping duty had been deducted from the price charged to the first independent customer, the average price of the Community industry would have been undercut by as much as 43.1 %.

#### **6. *Impact on the Community industry***

- (67) The price depressing effect of continued dumping during the investigation period was minimal, due to the application of the anti-dumping duty and the small quantities imported. The exporter had, however, sufficient unused capacity to resume exports of disposable flint lighters originating in Japan at significant levels, e.g. similar to the quantity imported in 1989 (56.6 million). If such a quantity would be sold in the Community market at the same prices that the German subsidiary of the exporter charged during the investigation period, this would result in substantial downward pressure on prices in the Community market and corresponding losses of turnover and market share.
- (68) The level of actual losses will depend on the extent to which Tokai Seiki GmbH would lower its customer delivered prices charged in the Community market, as a result of the anti-dumping duty of 35.7 % being lifted. If these prices would be lowered by the entire amount of the anti-dumping duty and imports would be 56.6 million, the Community industry would suffer an immediate loss of at least 4.88 % of its 1996 (whole year) turnover in the Community market as a result of undercutting alone if they were to lower

their price accordingly in order not to lose their customers. However, such loss does not include the losses on other sales due to the general, widespread price depressive effect of such undercutting and does not take into account the impact on the volume of sales, while the Community industry is set to lose sales as a result of price undercutting.

- (69) The quantity imported from Japan in 1989 would presently represent a market share of approximately 7.2 %. This market share is too significant to be without any impact on the situation of the Community industry. It was, however, not possible to establish with precision what the effect of the removal of the measures would be on such factors as market shares, profitability and employment of the Community industry as much would depend on uncertain factors such as the growth of consumption in the Community and the general price depression which may be caused by the resumption of importation of significant quantities.
- (70) A global analysis of some specific aspects of the main regional markets in the Community was made to assess the impact the importation of significant quantities of disposable flint lighters originating in Japan at prices which significantly undercut the Community price is likely to have on the Community industry.
- (71) It was established that competition on the German market was extremely fierce as major distributors and, in particular, supermarket chains are usually selecting one or two suppliers per product offered in their outlets and thus exercise downward pressure on the prices of these suppliers. In this situation even minimal price undercutting precludes the Community industry's access to distribution networks representing a large number of consumers. The effects of future price undercutting would therefore be out of proportion (be it in terms of loss of market share or loss of profitability) and would most likely last for an extended period of time as access to the distribution network is normally granted for long contract periods.
- (72) It was also established that at producer level prices in the United Kingdom were relatively low and the Community producers were not well established in this market. In these circumstances, future price undercutting would impair the penetration of Community producers' disposable flint lighters in this already difficult market and further reduce the profitability of their sales.
- (73) Competition in the French market was found to be important due to the very presence of the manufacturing plants of two major Community producers but price depression appeared less important than in e.g. Germany and the UK. As the penetration of imported products was relatively low and the Community industry is well established in this market, future price undercutting is likely to bring about not only some price depression but also a loss of market shares.
- (74) It was also established that two Community producers have production plants in Spain and are well established in that market. It was found that a very substantial part of the Spanish market is supplied by non-Community producers, as Spain was the second largest importing Member State in 1995,



and prices were low compared to France and Germany. As one of the producers established in Spain indicated that further rationalisation and cost reduction in its production plant was not possible, a loss of a substantial market share or a price war in the Spanish market is likely to result in closure of its plant, especially if this loss were matched by a similar development in the nearby, important French market.

- (75) Irrespective of the final destination in the Community of such future imports, sales of significant quantities of disposable flint lighters originating in Japan, would affect the Community industry's position in such a way that their beginning recovery would be severely impaired if not nullified as the Community industry would lose sales and market share. As a result of the additional price depression caused by price undercutting in respect of this quantity, e.g. at the level of the investigation period (43.1 % in the absence of anti-dumping duty), the recovery of the Community industry's profitability would, moreover, be impaired and the Community producers would probably close one or more plants in the European Community.

### **7. Volume and prices of overall imports**

- (76) As stated above, the Japanese exporter decided to supply the Community market with products manufactured in Mexico, on which anti-dumping measures were imposed in March 1997. Therefore, the remedial effect of the measure imposed in 1991 was much smaller than it would have been under normal circumstances.
- (77) In addition, overall imports of disposable flint lighters increased by 74 % from 1992 to the investigation period, an increase much higher than the increase of consumption during that period. As a result, the market share of these imports increased from 33.5 % in 1992 to 53 % in 1995 and 46.3 % in 1996.
- (78) As shown by the successive anti-dumping measures imposed from 1992 to 1998, there has been a continuous influx of low-priced and dumped imports from third countries in the Community market. As a result prices on the Community market have continuously dropped to reach low levels: in a growing market the prices of the Community industry nevertheless decreased by 8 % from 1992 to the investigation period.

### **8. Conclusion**

- (79) After the imposition of the anti-dumping duty, dumping of disposable flint lighters originating in Japan continued during the investigation period. It is therefore likely that dumping will also continue in the future.
- (80) It is considered likely that, should the measure subject to review be allowed to lapse, a resumption of the importation of large quantities of disposable flint lighters originating in Japan would cause material injury to the Community industry. First of all, because, if one bases oneself on the prices of Japanese lighters sold during the IP, the prices of such imports would significantly undercut the Community producers' price and thus affect their

financial results. Secondly, because prices on the Community market are already very low as a result of downward pressure on prices, and further downward pressure is therefore likely to force the Community industry to sell with a minimal profit margin or even at a loss. Thirdly, because the quantities are likely to be big enough to impair or nullify the recent recovery of this industry, to endanger its economic viability and to cause a loss of crucial markets for the Community industry.

- (81) In this regard, it should be noted that profit margins have been small for several years, that overall imports have shown a disproportionate increase and that, even if the exporter's sales of disposable flint lighters originating in Japan decreased, the remedial effect of the measure was undermined by that same exporter's decision to supply the Community market with dumped products originating in Mexico.
- (82) Given this link between the Mexican and the Japanese exporters, and the existence of sufficient, freely disposable capacity in Japan, the Japanese exporter would not only have the means to supply the Community market, but also the option to charge lower prices than permitted by its price undertaking in respect of its Mexican production, if the definitive duty Regulation were to be allowed to expire. The small market share of imports originating in Japan during in particular the investigation period could not invalidate this conclusion on the exporter's potential for future exports.
- (83) As it was established that there was sufficient unused capacity at the exporter's plant in Japan to supply the Community market with significant quantities of disposable flint lighters, that the dumped imports during the investigation period significantly undercut the Community industry's price, that the Community industry is only beginning to recover and its prices dropped some 8 % from 1992 to the investigation period, it is considered likely that the expiry of the measure under review would entail a recurrence of injurious dumping, if the exporter would decide to source its exports to the Community at its plant in Japan. Given the price competitiveness of the market and the exporter's strategy to avoid the anti-dumping duty under review, such a decision does not appear to be unlikely.

## **G. COMMUNITY INTEREST**

### ***1. Community industry***

- (84) The Community industry has for almost a decade been suffering from low-priced and dumped imports of disposable flint lighters. The objective of the definitive duty under review, to re-establish fair competition in the Community market between the Community producers and their exporting counterparts in third countries, has not been fully met as is shown by subsequent developments: Tokai itself set up a production plant in Mexico and started exporting from there to the European Community at dumped prices, while other third countries – more particularly China, the Philippines and Thailand – also resorted to dumping. As a result the Community industry has not been able to recover entirely, despite its efforts to reduce costs and to benefit from economies of scale.

- (85) The Community industry consists of two multinational groups selling several products other than disposable flint lighters and a relatively small producer, which combines the production of disposable flint lighters with a trading company.
- (86) The Community industry has been making considerable efforts to improve its productivity in recent years in an attempt to obtain the lowest possible cost of production and to enhance its competitiveness in this price sensitive market. Rationalisation efforts were made: the two producing groups have rationalised their production process and adapted their structures, the third producer's efforts were primarily based on the realisation of economies of scale. New investments were also made to improve productivity. However, given that export sales increased much faster than sales in the Community and export sales represent more than half of the Community producers' sales, the investments in production capacity were primarily made for the purpose of supplying markets other than the Community market.
- (87) Although no closure of production plants occurred, this appears due to a strategic approach of the producers concerned, supported by the existence of anti-dumping measures concerning disposable flint lighters and the development of their export sales. In this regard, it should be noted that all three producers have profitable activities in other sectors, which provide enough financial resources to maintain their production plants for disposable flint lighters for some time. It cannot, however, be ruled out that the effects of a discontinuation of an anti-dumping measure will provoke the mere closure of any of the production plants.
- (88) In view of the above, the effectiveness of the Community's measures designed to re-establish fair and open market conditions and to protect the Community industry against an unfair trading practice is at stake. This major consideration apart, there is a serious risk that Community producers put an end to production at one or more plants, if the anti-dumping measure were allowed to lapse and subsequently injurious dumping of large quantities of disposable flint lighters originating in Japan would occur. The impact thereof could be detrimental for some, if not all, of the regions in the Community where the plants are established.

## 2. *Importers*

- (89) As the exporter did not report any direct sales to unrelated parties in the European Community and no reaction was received from any importer after the publication of the notice of initiation, no unrelated importers of Tokai's lighters originating in Japan could be identified.
- (90) As regards Tokai's subsidiary in Germany, which is the sole importer of disposable flint lighters originating in Japan, it should be noted that it employed a very limited number of people as compared to the Community industry. The impact on this importer of maintaining the measure under review is therefore likely to be minimal.

### **3. Consumers**

- (91) In the original investigation, the importers alleged that the interests of consumers would be adversely affected by anti-dumping measures on disposable flint lighters. However, in the present investigation, no representations of consumers associations were received and there is otherwise no reason to assume that a change of circumstances has occurred which could invalidate the arguments used in previous investigations to reject this allegation.
- (92) It was therefore concluded that usually importers benefit from low-priced imports rather than the consumers and that it is the long-term consumers' interest that a wide range of products is offered at fair (rather than extremely low) market prices. Moreover, as disposable flint lighters are inexpensive products even when sold without dumping and do not therefore constitute a major part of any consumer's overall expenditure, consumers are not likely to refrain from buying this product if the absolute level of prices is increased somewhat.

### **4. Conclusion**

- (93) In view of the above, no compelling reasons not to take action were identified. It was therefore concluded that it is in the Community interest to maintain the anti-dumping measure on disposable flint lighters originating in Japan to avoid a recurrence of material injury to the Community industry caused by dumped Japanese imports.

## **H. DEFINITIVE MEASURES**

### **1. Level of measures**

- (94) As during the investigation period only a very small quantity of lighters originating in Japan was sold on the Community market, the market share of these imports was very small and, accordingly, the injury caused by such imports is considered negligible and, in any case, not material. In view thereof, and despite a substantially increased dumping margin, it is considered that the data concerning dumping and injury during the investigation period do not constitute a proper basis for an upward amendment of the anti-dumping duty.
- (95) It was, however, established that dumping had continued after the imposition of anti-dumping measures, that the exporter's unused capacity during the investigation period was considerable and that, given the existence of a price undertaking applicable to the Mexican subsidiary of the exporter, a decision to source again production for the Community market in Japan is not excluded, if the measures in force would expire.
- (96) It was also established that, after imposition of the duty, the prices charged during the investigation period still undercut those of the Community industry. If significant quantities of disposable flint lighters originating in Japan would be sold on the Community market at similar prices, it is

considered likely that the Community industry would suffer material injury as a result of the price depressing effect on prices in the Community market and a loss of sales which might well be disproportionate.

- (97) In these circumstances, it was established that there is a likelihood of recurrence of injurious dumping and it is considered that the current measure should be maintained to prevent dumping which would cause material injury to the Community industry.

## 2. *Residual duty*

- (98) As Tokai Corporation is the sole co-operating exporting Japanese producer, whose exports to the Community represented during the investigation period a high proportion of total exports of disposable flint lighters from Japan, it is considered appropriate to set the duty for any non co-operating companies which are not known at present, at the level of the duty set for that producer.

## 3. *Duration of measures*

- (99) As the length of the review was unusual, the duration of the maintained measure should, in this specific case, be fixed in such a way as to balance the rights and obligations of all co-operating parties. **To that end the duration of five years that would otherwise have applied, should be reduced. Furthermore, in view of the fact that the Japanese exporter has a fully owned and controlled subsidiary in Mexico and used its production base there to avoid delivering gas-fuelled, non-refillable pocket flint lighters originating in Japan, on which an anti-dumping duty was imposed, to its customers in the Community, it appears appropriate to reduce the duration by aligning it with that of the measure imposed on imports originating in Mexico.**

## 4. *Conclusion*

- (100) In view of the considerations and facts stated above, it is considered appropriate that the anti-dumping measure concerning the imports of disposable flint lighters originating in Japan be maintained at the current rate of duty **until 7 March 2002**. The new duty should therefore be 35.7 %.

## I. FINAL PROVISIONS

- (101) All interested parties co-operating with the investigation, the complainants, the exporter and the Japanese government, received disclosure in writing of the essential facts and considerations on the basis of which the Commission intended to recommend that the definitive measure be maintained.
- (102) The complainant producers did not submit any written comments and the exporter submitted comments of a general nature that did not justify any modification of the conclusions brought to its attention.
- (103) For the sake of clarity, provision should be made to amend the definitive duty Regulation, given that the anti-dumping duty on imports originating in

the Republic of Korea has lapsed and the present Regulation imposes a definitive anti-dumping duty on imports originating in Japan.

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of gas-fuelled, non-refillable pocket flint lighters falling within CN code *ex* 9613 10 00 (Taric code **9613 10 00\*19**) originating in Japan.
2. The rate of the duty, applicable to the net, free-at-Community-frontier price, before duty, shall be 35.7 %.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

*Article 2*

Regulation (EEC) No 3433/91 is hereby amended as follows:

- (i) At the end of Article 1(1) the words "originating in Japan, the People's Republic of China and the Republic of Korea" shall be replaced by "originating in the People's Republic of China".
- (ii) Article 1(2) shall be replaced by the following:

"2. The amount of duty shall be **EUR** 0.065 per lighter."

*Article 3*

1. This Regulation shall enter into force on the day following its publication in the Official Journal of the European Communities.
2. This Regulation shall remain in force **until 7 March 2002**, provided that, should any review of that measure be pending on that date, it shall remain in force until that review is concluded.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*  
*The President*