COUNCIL REGULATION (EEC) No 535/87

of 23 February 1987

imposing a definitive anti-dumping duty on imports of plain paper photocopiers originating in Japan

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Article 12 thereof,

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

Whereas :

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EEC) No 2640/86 [2], imposed a provisional anti-dumping duty on imports of certain plain paper photocopiers (hereinafter referred to as PPCs) originating in Japan. That duty was extended for a maximum period of two months by Regulation (EEC) No 3857/86 [3].

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping duty, all exporters and a number of independent importers as well as the complainant Community industry, requested, and were granted, an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.

(3) Upon request, parties were also informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which they could make representations subsequent to these disclosure meetings. Their comments were considered and, where appropriate, the Commission's findings were modified to take account of them.

(4) In addition to the investigations leading to the preliminary determination, the Commission carried out further investigations at the premises of Océ in the Netherlands, Olivetti in Italy and Rank Xerox in the United Kingdom.

C. NORMAL VALUE

(5) Normal value for those PPCs subject to the provisional duty was, for the purpose of definitive findings, generally established on the basis of the methods used for the provisional determination of dumping, taking into account new evidence submitted by the parties concerned.

(6) Certain exporters continued to request that account be taken, for the purposes of establishing normal value by means of domestic prices, of transfer prices between related companies or sales branches of these exporters on the Japanese market. The Commission, however, continued to consider such an approach as inappropriate for the reasons indicated in recital 7 of Regulation (EEC) No 2640/86, and this is confirmed by the Council.

(7) Some exporters objected to the elimination of certain sales, or sales channels, from the calculation of normal value where it was based on domestic prices, on the grounds that these sales were considered as not having been made in the ordinary course of trade. However, the Commission was satisfied that where such elimination occurred the sales had been made over an extended period of time (at least the reference period of January to July 1985), in substantial quantities and at prices which did not permit recovery of all costs within the reference period, which was considered a reasonable period of time as provided for in Article 2 (4) of Regulation (EEC) No 2176/84. This conclusion is confirmed by the Council.

(8) For the purposes of definitive findings, normal values, in such circumstances and in cases where the remaining sales, i.e. those considered to be in the normal course of trade, comprised less than 5 % of the volume of exports of the particular model concerned to the Community, were established by means of constructed values.

[1] OJ No L 201, 30. 7. 1984, p. 1.
[2] OJ No L 239, 26. 8. 1986, p. 5.
[3] OJ No L 359, 19. 12. 1986, p. 9.

In addition to own-brand sales, most of the exporters sold PPCs to OEMs (Original Equipment Manufacturers), that is, importers who sold these products in the Community under their own brand names. These OEMs were generally companies which had previously manufactured their own brand of PPC or continued to manufacture other products in the sector of office electronics or reprographics. These machines were generally of a different design and had different technical specifications from those sold under the Japanese manufacturers' own brand. No sales of these OEM machines took place on the Japanese market during the reference period and, accordingly, for the purposes of establishing normal values for comparison with export prices to OEMs, constructed values were used.

(9) The constructed values were computed by taking all costs, both fixed and variable, in the country of origin of materials and manufacture, plus selling, administrative and other general expenses and a reasonable margin for profit. In cases where domestic sales were made through a subsidiary sales company or companies, an allocation, generally on the basis of turnover, was made to include in the constructed value the selling, administrative and other general expenses of these sales companies. On other occasions, allocations were made on the basis of available accounting data and the method proposed by the company itself. In such cases, it was demonstrated to the Commission that the method used was reasonable and did not depart significantly in result from an allocation based on turnover.

One exporter argued that research and development costs should not be included in any calculation of a constructed normal value. The Commission rejected this view, considering that such costs were reasonable general expenses which, in accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2176/84, should be added to all costs of material and manufacture.

(10) As regards profit, however, the Commission took note of the representations of certain interested parties regarding the calculation of profit for the purposes of constructing normal value.

As a result, the Commission accepted that it would be appropriate for the purposes of definitive findings to calculate a profit for each exporter based on its sales in the normal course of trade of PPCs on the domestic market which were comparable to those exported and not, as for provisional findings, on the basis of the exporter's photocopying business as a whole on the domestic market. In addition, this approach is entirely consistent with that adopted for injury calculations relating to the Community industry.

Some exporters argued that by restricting the calculation to sales of machines in the normal course of trade, and thereby eliminating certain sales at a loss, an artificially high profit margin was obtained. In addition, it was argued that certain sales at a loss should be considered in the normal course of trade as being normal commercial practice in the PPC business. The Commission rejected this view since the provisions of Article 2 (4) of Regulation (EEC) No 2176/84 provide that in such circumstances normal value may be determined on the basis of the remaining, i.e. profitable, sales only.

In any event, since the sales treated as profitable included all sales of machines sold on average at above production cost, some sales made at a loss were incorporated in the calculation, especially in cases where the average price was close to production cost.

For those exporters for whom the information available was insufficient to make this calculation, or who traded at a loss or who did not make sales, or sufficient sales, of comparable products on the domestic market, in view of the variety of profit margins found, the average profit margin of the other exporters for which appropriate information was available was applied.

This average profit margin was calculated to be 14,6 %.

(11) Where constructed values were established for comparison with export sales to OEMs, the Commission recognized a difference between sales of a manufacturer's own brand product and sales to OEMs. However, since no sales to OEMs took place on the Japanese market during the reference period, any difference in cost or profit could not be accurately assessed (see recitals 22 to 24). However, Article 2 (3) (b) (ii) of Regulation (EEC) No 2176/84 provides that constructed values shall be determined by adding cost of production and a reasonable margin of profit, and that where there is no appropriate information on a normal profit realized on the domestic market of the country of origin, the profit shall be determined on any reasonable basis.

Accordingly, in view of the Commission's recognition of the difference between manufacturers' own brand sales and sales to OEMs, it is considered reasonable that this difference in either cost or profit be taken account of by applying a lower profit level to the constructed values calculated for a comparison with export prices to OEMs.

Since no guidance can be given from OEM sales on the Japanese market as regards any such differences, it is considered appropriate that the same profit level be applied to all such constructed values and that this level should be 5 %, instead of the profit level for the exporters' sales of PPCs on the domestic market applied in other constructed values.

(12) Several exporters continued to claim that selling, general and administrative expenses incurred by their sales organizations in Japan should not be included in the calculation of normal value, whether based on constructed value or domestic prices. The Commission considers, however, that such expenses should be included in the determination of normal value for the reasons indicated in recital 12 of Regulation (EEC) No 2640/86.

As far as sales to OEMs are concerned, reasonable account has been taken of any differences in costs and profit in establishing normal value for these sales (see recital 24 below).

In addition, it was argued that certain sales not involving OEMs would not have incurred the costs of the related sales organizations had they been made on the Japanese market. In the absence of any satisfactory evidence in support of this hypothesis, the Commission considers that the selling, general and administrative expenses of the sales organizations should be included in any calculation of normal value for these sales. The Commission is also of the view that a reasonable amount for such expenses must be taken account of in establishing a normal value on the basis of constructed value, where the exporter has no sales of the product concerned on the domestic market. These conclusions are confirmed by the Council.

(13) All exporters who had previously claimed an allowance for payment for traded-in machines continued to make this claim in their submission in response to the imposition of provisional measures. The Commission again considered fully the argument made by the exporters concerned but no new evidence was received to alter its preliminary determination as described in recitals 13 and 14 of Regulation (EEC) No 2640/86.

These trade-in payments are made by the producer either directly to the end-user or to a dealer to enable that dealer to make a payment to end-users for traded-in machines. The payment is accordingly additional to and separate from any discount which may be given and for which the only benefit to the producer (or dealer) is the sale of the new machine. Unlike the case of an ordinary discount, when a trade-in payment is granted the producer received something in return. This return is not related to any resale value of the traded-in machine in Japan since the machines are, except in very exceptional circumstances, removed from the market. Rather, this return corresponds to the benefit the producers obtain from, or attach to, the removal of the traded-in machines from the market, and the resultant lack of a second-hand market for PPCs in Japan. The demand for new machines is maintained at the highest possible level with prices consequently also being held at higher levels than would have been the case had a second-hand market existed. This higher demand not only stimulates prices but also higher production levels which should normally result in increased economies of scale and commensurately higher profit levels.

Some exporters claimed that all or part of the trade-in payment was in essence an ordinary discount and should, accordingly, be taken account of.

The Commission, however, received no satisfactory evidence to allow it either to establish the validity of the claim or to quantify it accurately. The investigation showed that there was effectively no second-hand market for PPCs in Japan. In addition, the Commission noted that each exporter operated a number of discount schemes as distinct from the trade-in payments. These payments were described in every case as being for traded-in machines and were conditional almost without exception on the machines being removed from the market. Thus, all the evidence suggests that the exporters' claims in this respect are invalid and in any event Article 2 (10) of Regulation (EEC) No 2176/84 requires that exporters must prove that such claims are justified, which is not the case here.

One exporter argued that when invoicing its customers it had already made provision for the trade-in payment. It also argued that, in its case, dealers were not required to prove that the machines were removed from the market before qualifiying for the trade-in payment.

The Council considers, that, for dumping calculations, the invoice price is not necessarily the determining factor. In the case in point, it was found that the invoice price was net of certain discounts and the trade-in payment. Appropriate account had therefore to be taken of both types of payment. The fact that there is virtually no second-hand market for PPCs in Japan shows that almost without exception the dealers remove the machines from the market and that consequently this exporter obtained intentionally or otherwise the same benefit as all other PPC producers in Japan. No convincing evidence was supplied by the exporter concerned to suggest the contrary.

(14) Thus, the Commission is of the view that, despite the variety of methods both of making such payments and of dealing with them from an accounting point of view, the same principles can be applied to all payments for traded-in machines in the Japanese domestic market. The Commission has concluded, therefore, and the Council confirmed, that the producer receives a value for the trade-in payment apart from the value to it of the sale itself and that the trade-in payment, bearing in mind the consequent benefits to all producers of PPCs on the Japanese market of this practice, represents effectively the value to the producer of the removal of the traded-in machine from the market.

D. EXPORT PRICE

(15) On receiving submissions from certain exporters relating to the content of recital 16 of Regulation (EEC) No 2640/86, the Commission has re-examined the facts in cases where, although the subsidiary company was not the formal importer, it performed the functions and bore the costs which are normally those of a related importer. In these cases it took orders, purchased the product from the exporter and resold, at generally higher prices, to, *inter alia,* unrelated customers. These customers were distributors of the product concerned in areas, generally Member States, in which the exporter did not have a subsidiary importing and distributing organization. They were supplied with technical support and servicing by the exporter's subsidiary company in the Community which also spent considerable sums on advertising the product concerned in the Community, both directly and by means of advertising support payments made to these unrelated customers.

It was claimed that, in such circumstances, the export price actually paid or payable in terms of Article 2 (8) of Regulation (EEC) No 2176/84 should be that invoiced by the subsidiary to the independent customers in the Community.

In Regulation (EEC) No 2640/86 the Commission partially accepted the arguments put forward by the exporters. However, the Council now considers that, in such circumstances, the price paid for export to the Community is that between the exporter in Japan and its subsidiary in the Community, which, although not formally importing the product, assumes, nevertheless, the functions typical of an importing subsidiary. This price, being a transfer price, should be considered as unreliable. Accordingly, the export price should be constructed on the basis of the price at which the product is first sold to an independent buyer, allowance being made for all costs incurred by the subsidiary in question, as provided for by Article 2 (8) (b) of Regulation (EEC) No 2176/84.

Appropriate allocations, on the basis of the evidence presented by the parties concerned, have been made to take account of different costs incurred by the associated company in selling to different types of independent customers.

(16) The Council confirms the Commission's provisional findings as regards the application of Article 2 (8) (b) of Regulation (EEC) No 2176/84, as described in recital 17 of Regulation (EEC) No 2640/86. As regards the question of the sales to OEMs discussed in recital 18 of that Regulation, the Council confirms the Commission's findings that the export prices in these circumstances should be appropriately adjusted to take account of the function of the exporter's subsidiary in making such sales.

The Council also confirms the Commission's findings as expressed in recitals 19 to 24 of Regulation (EEC) 2640/86.

E. COMPARISON

(17) For the purpose of a fair comparison between normal value and export prices, the Commission took account, where appropriate, of differences affecting price comparability, such as differences in physical characteristics, and differences in conditions and terms of sale, where claims of a direct relationship of these differences to the sales under consideration could be satisfactorily demonstrated. This was the case in respect of differences in credit terms, warranties, commissions, salaries paid to salesmen, packing, transport, insurance, handling and ancillary costs.

(18) All comparisons were, where possible, made at the same level of trade. In order to place the export price and the normal value on a comparable basis, due allowance was made for differences affecting price comparability in accordance with Article 2 (9) and 2 (10) of Regulation (EEC) No 2176/84.

(19) As regards differences in physical characteristics, some exporters supplied PPCs on their domestic market without reprographic drums, these being supplied as part of a maintenance or service contract which includes the supply of consumables e.g. toner and developer. Where comparable machines are sold for export including the reprographic drum, an adjustment to normal value should be made to take account of this difference. Article 2 (10) (a) of Regulation (EEC) No 2176/84 provides that in such circumstances allowance shall normally be based on the effect on the market value in the country of origin or export and that 'where domestic pricing data in that country are not available, or do no permit a fair comparison, the calculation shall be based on those production costs accounting for such differences'. For some exporters, the prices of drums on the domestic market are not separately available since these prices are included in the price of the service contract. In such cases, the adjustment was calculated on the basis of the constructed value of the drum determined by adding the cost of production, as defined in Article 2 (3) (b) (ii) of Regulation (EEC) No 2176/84, and a reasonable margin of profit. It was considered reasonable, in the absence of satisfactory information on the profitability of sales of drums in Japan, to consider that margin the same as for the PPC itself (see recital 10).

(20) Claims were also made for allowances in respect of overheads and general expenses. Article 2 (10) (c) of Regulation (EEC) No 2176/84 provides that allowances for differences in conditions and terms of sale shall be limited to those which bear a direct relationship to the sales under consideration, and that allowance for differences shall generally not be made for overheads and general expenses. Since the Commission was not satisfied in any instance in the present case that overheads and general expenses fell into the categories of directly related expenses, the Council confirms the Commission's provisional findings as set out in recital 26 of Regulation (EEC) No 2640/86 that no allowance should be granted for differences in such costs.

(21) Some exporters made, in their submission to the Commission following the imposition of provisional measures, the same or similar claims to those mentioned in recital 27 of Regulation (EEC) No 2640/86. However, the Commission's view on these matters, as expressed in recital 27, has remained unaltered, namely, that no allowance can be made for overheads and sales, general and administrative expenses incurred by exporters' sales companies or branches in their domestic market. This view is confirmed by the Council.

(22) Most exporters also requested an allowance to cover alleged differences in costs where PPCs are sold exclusively to dealers in Japan and to dealers, distributors and OEMs in the Community.

In the first place, as regards a comparison between sales to dealers on the domestic market and to distributors of the exporters' own brand of PPCs in the Community, no evidence was received on any cost differences relating to these sales which could be considered allowable under Article 2 (10) of Regulation (EEC) No 2176/84.

(23) Secondly, as regards sales to OEMs in the Community, the Commission has received further submissions both from exporters and the OEMs concerned in support of their claims for an allowance to take account of alleged cost differences between sales to dealers on the Japanese market and domestic sales to OEMs, had there been any such OEM sales.

In considering such an allowance, however, the Commission has been unable to deviate from the principle as stated in recital 28 of Regulation (EEC) No 2640/86 that, for an adjustment to be made, it has to be satisfied that, had a large number of OEMs existed on the Japanese market as in the Community, the costs incurred by the Japanese sales companies for sales to OEMs would have differed from those for sales to other independent purchasers of the exporters' own brand name, or that the value of the product to the purchaser may have differed.

(24) The exporters continued to argue that such sales were not made at the same level of trade since they were generally made in large quantities fob Japan and incurred minimal selling costs as compared to the selling costs incurred by the sales companies on the Japanese market. However, these exporters were unable to show, to the satisfaction of the Commission, that had a large number of EMS existed on the Japanese market, as in the Community, by how much, if at all in some cases, such costs would differ from those actually incurred on their domestic sales to independent purchasers.

Nevertheless, even in the absence of such evidence, the Commission, in calculating normal value for comparison with export sales to OEMs, has recognized that there may be a difference in costs or profit and has made due allowance for this difference (see recital 11).

(25) For one exporter, it was argued that it merely acted as a subcontractor in the manufacture of PPCs for an OEM. This view was not shared by the Commission. In the first place, the exporter appeared, from the evidence available to the Commission, to merely supply the OEM concerned with PPCs which were similar to products sold under the producers' own brand name. In any event, even if the producer concerned could be considered in some way to be the OEM's subcontractor, the calculation of the normal value comprised only production costs incurred by the exporter concerned, together with a reasonable margin for profit. No further adjustment was therefore necessary for comparison with export prices.

F. DUMPING MARGINS

(26) The final examination of the facts shows the existence of dumping in respect of imports of PPCs originating in Japan from all the Japanese exporters 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.

(27) The margins of dumping varied according to the exporter and the weighted average margins were as follows :

	%
— Canon	26,6
— Copyer	7,2
— Fuji Xerox	22,0
— Konishiroku	30,8
— Kyocera	60,1
— Matsushita	36,1
— Minolta	35,0
— Mita	12,6
— Ricoh	40,6
— Sanyo	34,7
— Sharp	24,8
— Toshiba	10,0

The substantial differences in the margins established resulted, to a considerable extent, from the Commission's taking account of a difference between OEM sales and own-brand sales (recital 11). In general, lower margins were established for those companies which had high levels of OEM sales.

G. LIKE PRODUCT

(28) In its provisional findings, the Commission concluded that, while all photocopiers were not 'like products' within the meaning of Article 2 (12) of Regulation (EEC) No 2176/84, PPCs in adjoining segments at least could be considered to be like products as set out in recital 38 of Regulation (EEC) No 2640/86. This conclusion was contested by certain exporters who maintained that no single market for PPCs exists and consequently that not all PPCs could be considered as like products. On the one hand it was argued that the personal copier segment of the market, developed by Canon, should be treated separately. Another argument advanced was that machines classified in segment 4 of the Dataquest classification formed a different market from those in segments 1 to 3. Finally, it was alleged that there was insufficient evidence to demonstrate that photocopiers in adjoining segments were like products.

(29) Personal copiers constitute a separate segment of the Dataquest classification and comprise the smallest and cheapest machines sold on the market. The Commission stated in its provisional findings (recital 49) that the development of this product helped to expand the market for small copiers, but determined also that this product increased competition at the low end of the market. This conclusion is supported by the fact that in terms of the range of copy volumes and machine speed, there is an overlap between the machines classified in the personal copier segment and those in segment 1. In addition, the Commission received evidence of offers for contracts demonstrating that personal copiers competed with other copiers, notably those classified in segment 1. These examples demonstrate that the personal copier segment cannot be isolated from the rest of the PPC market.

In any event, even if the exporters' argument that the personal copier sector should be analysed separately were valid by virtue of the fact that personal copiers are a separate product, Tetras, a Community producer, manufactures a personal copier which is evidently a like product to personal copiers sold by Japanese producers on the Community market.

(30) The argument advanced by one exporter that segment 4 machines form a separate and distinct product market from PPCs classified in segments 1 to 3 was based on a number of general considerations linked to the technical features of segment 4 copiers : their higher volume, the possible need for operator assistance and the lower cost per copy. The Commission did not consider that these features were sufficient to distinguish such machines as a separate product from those copiers in adjoining segments, the more so in view of the documentary evidence that such machines can compete with those in other segments.

As to the general question of whether photocopiers in adjoining segments are like products, the Commission received and analysed a number of submissions detailing instances of cross-segment competition on the market. On the basis of evidence from contracts submitted by the complainants, it was found that not only are machines in adjoining segments frequently in competition with one another but also that, on occasions, there was competition between photocopiers classified in segments which were not adjoining, i.e. the machines were separated by two or more segments in terms of the Dataquest classification. In addition, the Commission examined certain advertising material in which a European subsidiary of a Japanese company emphasized that its machine competed with photocopiers in a different segment.

Furthermore, certain key criteria used by Dataquest to classify models in different segments, notably machine speed and copy volume, are established for each segment in terms of ranges which overlap to some extent. A comparable picture emerges from the study on model comparisons produced by the specialist German market research IMV Info-Marketing ('Info-Markt') for the Commission, which was based in part on the Dataquest classification. This study also makes reference to the advantages and disadvantages that customers must weigh up when deciding whether to centralize or decentralize copy facilities, a consideration which indicates in itself the existence of competition between machines in different categories.

(31) In the light of the evidence presented, the Council confirms the Commission's provisional finding that machines in adjoining segments are sufficiently alike to be considered 'like products' in the context of this proceeding. Since Japanese exporters were supplying PPCs in the personal copier segment and in segments 1 to 4 inclusive in the reference period, all photocopying machines up to and including those incorporated in segment 5 of the Dataquest classification should be treated as like products to those exported from Japan. Segment 6 machines, for which there was neither Community nor Japanese production in the reference period are, as before, excluded from the scope of the proceeding.

H. INJURY

(i) Volumes

(32) In order to determine more precisely the structure of the Community market and the volume of sales effected on it, the Commission requested, following the publication of its provisional findings, certain additional information relating to import volumes, sales and resales in the Community from Japanese exporters, OEMs and Community producers. In view of the fact that a number of Japanese related companies and independent purchasers re-export PPCs to destinations outside the Community it was felt that the most appropriate way to analyze trends in imports into the Community would be to examine the sales and rentals of new PPCs on the Community market. This was carried out over a five-year period from 1981 to the end of the reference period (July 1985).

(33) The figures as finally established showed that the total number of sales and rentals of new Japanese-produced PPCs distributed by Japanese subsidiary companies, OEMs and by Community producers increased from about 210 000 units in 1981 to about 470 000 in 1984 in the Community excluding Spain and Portugal, a rise of over 120 %.

On the same basis, new units sold or rented of Japanese-produced machines amounted to approximately 300 000 units in the reference period (January to July 1985), a monthly average rate of sale almost 145 % higher than that in 1981. Overall, the share of the Community market held by Japanese-manufactured machines increased from 70 % in 1981 to 78 % in 1985 in the reference period. These figures include resales of Japanese-produced photocopiers by the Committee of European Copier Manufacturers (CECOM) producers which amounted to about 3 to 5 % of the total Community market in each year of the five-year period 1981 to 1985 (up to July 1985).

(34) Sales and rentals of new machines in the period under review manufactured by the Community producers Rank Xerox, Océ, Olivetti, and Tetras increased from 62 000 units in 1981 to 108 000 in 1984, a rise of 74 %. In the reference period, the average monthly rate of sales and rentals of new machines manufactured by CECOM members was about 6 300 units, 20 % higher than the equivalent figure in 1981. Overall, the market share attributable to CECOM's own manufactured machines fell from 21 % in 1981 to 11 % in 1985 in the reference period.

(35) The market share of other suppliers — Community producers who do not support the complaint, and exports from two US suppliers — decreased from 9 % in 1981 to 6 % in 1984 but rose sharply in the reference period to 10 % of the total Community market. The sharp increase in 1985 is attributable principally to sales of PPCs from a new production plant established by Canon in the Community in 1984.

(36) Overall, the evidence available to the Commission demonstrates that from 1981 to the end of the reference period, a time of rapid growth in the market, CECOM producers' share in terms of volume of new sales and rentals of PPCs has fallen substantially, whilst that attributable to machines manufactured in Japan and sold in the Community under own-brand or OEM labels has increased.

(37) The Commission's approach to analyzing trends in market share was criticized by certain exporters and OEMs who argued that much of the increase in market share was due to the marketing of the personal copier in large volumes from 1983 onwards. Thus it was argued that, instead of looking at total volumes of new machines sold, the analysis should focus on trends in market share within each Dataquest segment.

(38) The data available to the Commission were unsatisfactory and inconclusive. For the reasons given in recitals 28 to 31, the Commission does not agree that the market can be subdivided in the way proposed by the exporters or the OEMs.

(39) As regards personal copiers, this market has been dominated by Japanese manufacturers since the introduction of the first such copier in 1982, and the sales by Tetras, the only Community producer manufacuring a personal copier, were not significant in 1984 or 1985. However, when account is taken of the fact that some of these sales were in effect substitutes for, and were competing with, sales of other low-volume copiers, it is evident that the real share of Community producers at the low volume end of the market as a whole is lower than indicated by examining segment 1 alone.

(40) Finally, certain interested parties contended that copy volume was the best method of calculating market share. The Commission considered that, since photocopying machines and not copies were exported to the Community by Japanese producers, the main concern of the anti-dumping investigation was to determine whether these products were dumped and causing injury to Community producers. It follows therefore that the relevant market for these proceedings is that for PPC machines. If copy volumes were to be analysed, this would involve investigating other products such as paper and other supplies which are in general sold separately from photocopying machines. For these reasons it is considered appropriate to analyze the market for photocopying machines in this proceeding.

(ii) **Prices**

(41) In its provisional findings the Commission outlined the particular difficulties with which it was confronted when comparing prices of Japanese-manufactured and Community-produced machines on the Community market. These problems related in particular to model comparisions and the adjustments to the prices to be compared to take account of the fact that sales were made to different types of customers.

As a result, at the provisional stage, the Commission restricted its comparison of models to those where no adjustment was needed to take account of different features. On this basis, and allowing for adjustment, where necessary, of prices to take account of sales to different types of customers, price undercutting was found to have taken place on the Community market.

(42) In order to facilitate a more comprehensive analysis of price undercutting following the provisional findings, the Commission concluded a contract with the German market research agency, Info-Markt, to undertake a technical study of model comparisions on the German market. The purpose of this study was to draw up a list of Japanese and Community-produced models with comparable technical features which could be used by the Commission to determine, definitively, the degree of price undercutting on the market.

(43) The study produced by Info-Markt, which has been made available to interested parties in the proceeding, establishes standards for the key features of PPC machines in each segment of the market. The features of different models were then categorized as being above, below or equal to the class (segment) standard. On this basis it was possible to draw conclusions as to whether any particular pair of machines could be reasonably compared in terms of features. In general terms, the conclusions of the report confirmed that it was possible to make price comparisons between models and hence that the approach of the Commission was reasonable.

(44) One conclusion to emerge from the report was that Japanese-manufactured models generally had more features than competing CECOM models. Consequently, the Commission, when selecting pairs of models for comparison, was obliged frequently to choose a CECOM model less endowed with features to compare with a Japanese-produced model with similar basic characteristics. Thus, within a segment, basic Japanese machines tended to have more additional features (e.g. at the lower end of the market, reduction and enlargement capabilities, zoom, coloured toners, etc.) than comparable Community-produced machines. In general, a more highly featured model should be at a higher price by virtue of its additional functions.

(45) In order to render end-user sales prices of CECOM members comparable with sales by Japanese-related subsidiary companies in the Community, which are sales mainly to independent dealers, the Commission made adjustments using the methodology indicated in recital 53 of Regulation (EEC) No 2640/86. The amounts of the adjustments took account of representations made by exporters, OEMs and the complainants.

(46) Price comparisons were carried out for sales prices only. A comparison of rental prices was not considered feasible in view of the wide variety of pricing mechanisms and the fact that such prices incorporate revenues from servicing the machine which vary according to the type of maintenance contract concluded, as well as a hardware revenue element attributable to the machine and an element for financing the rental.

Rental revenues attributable to machines constitute an estimated 35 % of Community producers' turnover from machines. For Japanese subsidiary companies the proportion of total revenues attributable to machines and accounted for by rentals is very small. The question arises therefore whether Community producers' sales prices constitute a sufficiently representative sample to compare with Japanese prices. In the view of the Commission, this is the case.

(47) Since in almost all cases the same models are sold by exporters throughout the Community, the conclusions of the Info-Markt study concerning the comparability of models sold in Germany are applicable to the Community as a whole. On this basis and following the principles outlined above, the Commission carried out a detailed price comparison exercise for each exporter's sales of PPCs in the Community in all cases where a reasonable comparison on technical grounds could be made. The number of models selected for each exporter for this exercise constituted a representative sample of their total range of models sold in the Community.

The facts as finally established showed that price undercutting was widespread and was practised by all exporters without exception. This undercutting took the form not just of lower prices but also of more highly featured machines being sold at prices at or even below those of Community producers. This latter form of undercutting was particularly common.

(48) Although widespread, the degree of price undercutting could not in overall terms be described as substantial. In addition, for nearly all exporters, at least one model was found not to be undercutting the CECOM model compared with it. Another observable feature was the transient nature of the undercutting. Models found to be sold at undercut prices in one period were often found not to be sold at undercut prices in following periods. This can be explained by the fact that the PPC market in the Community is a mature market with a substantial number of competing suppliers which makes it difficult for sellers not to align their prices with those prevailing in the market over extended periods of time. In such circumstances, failure to follow market prices may have an impact on volumes relatively quickly.

(49) Overall, and in spite of the difficulty of comparing models with different features and sales to different classes of customers, the evidence available to the Commission showed that :

— price undercutting was widespread and practised intermittently by all Japanese exporters on the Community market,

— undercutting was, in general, transient in nature and did not persist with regard to a particular model over extended periods of time since Community producers adjusted their prices to meet the downward price pressure exerted by Japanese exporters,

— the degree of price undercutting was in general relatively small in terms of price,

— price undercutting in the form of the sale of more highly featured models at prices comparable to or below those of lesser-featured models sold by Community producers was quite common. However, it was not possible reliably to place a value on the additional features incorporated in Japanese machines and hence this type of undercutting could not be quantified.

In the light of the above, the Commission concluded that there was evidence that Community producers had suffered injury through price undercutting by Japanese exporters on the Community market even though this undercutting was transient in nature and often took the form of the sale by Japanese exporters of machines, richer in features than those of Community producers at comparable or even lower prices.

The Council confirms these conclusions.

iii) **Definition of Community industry in the context of the proceeding**

In this case the Commission has been obliged to take into consideration the fact that all Community producers concerned with this proceeding have links of either a corporate or commercial nature with Japanese exporters. This has given rise to complex questions regarding the definition of Community industry under Article 4 (5) of Regulation (EEC) No 2176/84 and has necessitated a detailed examination of the position of each of the complainant companies based on the specific facts pertaining to each company's situation.

(a) *Position of Rank Xerox*

(50) In Regulation (EEC) No 2640/86 the question of whether Rank Xerox, in view of its corporate relationship with its Japanese supplier, Fuji Xerox, should be included as part of the Community industry for the purposes of assessing injury within the context of the proceeding was essentially left open since the Commission concluded that there was injury to Community producers irrespective of whether Rank Xerox's production of low-volume copiers was included in the term 'Community industry' or not. However, since the duty required to remove the injury was calculated to be at a lower level when Rank Xerox was included in Community industry for the assessment of injury than if it had been excluded, for the purposes of the provisional findings, the Commission decided to consider Rank Xerox as part of the industry.

(51) In order to come to a definitive decision on the position of Rank Xerox in the proceeding, the Commission re-examined all matters relevant to the assessment of whether the Community industry, as defined in Article 4 (5) of Regulation (EEC) No 2176/84, should include Rank Xerox. As a starting point the Commission reviewed the relative importance of Rank Xerox's operations with its affiliate Fuji Xerox compared with the company's other operations in the photocopier industry in the Community.

(52) The facts as finally established show that Rank Xerox's imports from Fuji Xerox of PPCs which were sold in the Community represented about 7 % of the company's total sales and rentals in the Community of new machines in segments 1 to 5 over the period 1981 to the end of the reference period. With the exception of the imports of the 1055 mid-volume model from Fuji Xerox in 1984, these imports were all segment 1 and 2 copiers and represented approximately 8 % of Rank Xerox's segment 1 and 2 machine sales and rentals in the Community of these machines in the same period. In terms of sales and rentals of new machines in segments 1 to 5 inclusive on the Community market by all producers over the period 1981 to July 1985, Rank Xerox's resales of Fuji Xerox imports represented less than 1 % of the total.

(53) The findings in Regulation (EEC) No 2640/86 (recital 74) regarding Rank Xerox's reasons for importing principally in advance of the setting-up of manufacture of the equivalent model in the

Community, and regarding the resale prices of the Fuji Xerox imports being the same as those of models manufactured in the Community are confirmed, no contrary evidence having been produced.

(54) With regard to Rank Xerox's sales of segment 1 and 2 copiers not supplied in complete units by Fuji Xerox over the period 1981 until the end of the reference period, it was alleged that these were produced in the Community from parts supplied in large measure to Rank Xerox by Fuji Xerox. Following these allegations, the Commission investigated the production of all photocopiers manufactured by Rank Xerox in the Community. In this context the Commission visited the manufacturing plants of Rank Xerox in the United Kingdom (low-volume machines) and the Netherlands (mid-volume machines) and examined the nature of the manufacturing operations carried out in each plant.

(55) In the Netherlands it was found that integrated manufacturing operations were carried out by, or on behalf of, Rank Xerox in the Community. The value added within the Community in these manufacturing operations exceeds 70 %. The photocopiers produced by Rank Xerox in the Netherlands have Community origin.

In the United Kingdom, Rank Xerox's products were manufactured on the basis of parts originating predominantly in Japan and to a lesser degree in the Community. However, Rank Xerox had already set in motion concrete plans to replace certain key components of Japanese origin with parts produced in the Community. These plans have materialized in the meantime, leading to a substantial increase in value added within the Community for these low-volume products.

As regards the type of operations carried out in the United Kingdom, these consist of the construction of sub-assemblies for the production line, including the fusers, modules, develop boxes, cassettes, semi-automatic document handlers, optics and other minor assemblies. These operations are completed by the frame assembly and the final mainline assembly of sub-assemblies and components. The manufacturing process is completed by testing and packing of the photocopiers. Overall, in the reference period, the value added in the Community in the production of Rank Xerox's low-volume copiers was between 20 % and 35 %.

(56) The Commission has examined whether, in view of these facts, Rank Xerox can be considered as a Community producer of segment 1 and 2 copiers within the meaning of Article 4 (5) of Regulation (EEC) No 2176/84. The Commission has noted that the Regulation does not lay down precise guidelines in this context. In particular, no threshold has been specified in either Community legislation or in previous cases for the minimum value added that must be respected in order for a producer to qualify as part of Community industry. Therefore the Commission has been obliged to look at the particularities of the present case.

(57) The first point to note is that the company is a manufacturer of photocopiers in the Community of long standing and one of the largest companies in the market.

Whilst the production operations of Rank Xerox in the United Kingdom were more limited than the activities undertaken at its plant in the Netherlands during the reference period, the company did nonetheless undertake a multiplicity of manufacturing operations necessary in order to produce copiers for the market. In addition, Rank Xerox has been actively engaged in the process of replacing parts from Japan with other key components either of its own manufacture or from subcontractors within the Community.

The investigation showed that, if no protective measures covering segment 1/2 copiers were taken, then the process actively engaged in by Rank Xerox of replacing key parts sourced from Japan with Community-produced supplies would be jeopardized. Article 4 (1) of Regulation (EEC) No 2176/84 authorizes protective measures in the case of the retardation of the establishment of an industry. If no anti-dumping measures were to be taken in this case, there would be a setback not only to Rank Xerox's future plans on sourcing products from the Community, which are already well established, but also a threat to the process already begun in this area. This might lead to a rupture in the process of building up Rank Xerox's production of low-volume copiers based on parts manufactured in the Community.

(58) In any event, since the like product in the proceeding has been defined to be all photocopiers from personal copiers up to and including machines classified in Dataquest segment 5, it would be inappropriate to analyse whether a Community producer should be part of Community industry just in terms of its production of one model or a limited range of models. This is the case even if, looked at in isolation, there were doubts as to whether Rank Xerox's manufacturing operations in the United Kingdom were sufficient to confer upon it the status of a Community producer in the sense of Article 4 (5) of Regulation (EEC) No

2176/84, for segment 1/2 copiers. The weighted average value added in the Community for all PPCs manufactured by Rank Xerox in the range segment 1 to segment 4 was in excess of 50 % in the reference period. Also the company has a policy of obtaining an increasing proportion of its components from within the Community.

(59) In any case, even if Rank Xerox's production in the United Kingdom was not regarded as part of Community industry for the purpose of these proceedings, there would remain Community production of PPCs in the same segments of the market as Japanese products, or in adjoining segments. The rates of duty appropriate to protect that Community production in accordance with the criteria used in this Regulation would be unaffected.

(60) The Commission also examined the issue of whether Rank Xerox should be excluded in whole or in part from the definition of Community industry by virtue of the benefits it derives from dumped imports from Fuji Xerox. In addition, an investigation was made of the question whether, in purchasing from Fuji Xerox, Rank Xerox inflicted injury upon itself and whether its motivation in importing was not one of acting primarily out of self-defence but more one of profit maximization within the context of its parent's, Xerox Corporation's, worldwide rationalization of copier production.

(61) With respect to the benefits that Rank Xerox derives from its corporate relationship with Fuji Xerox, it is evident that there are gains arising from the supply of cheap machines prior to start-up of production in the Community. These benefits, however, are short-lived and limited in scope. Furthermore, when account is taken of the volumes of imports concerned it is evident that the benefits are insignificant when assessed against injury being caused to Rank Xerox through dumping by other Japanese exporters.

(62) As regards the possibility that Rank Xerox may have inflicted injury upon itself by provoking or contributing to a fall in prices on the market, there is no evidence to suggest this. In the first place, Rank Xerox's resale prices for segment 1 and 2 products imported from Fuji Xerox were the same as for the corresponding Rank Xerox Community-produced machines and these prices were generally undercut by the prices of Japanese subsidiary companies on the Community market. This fact demonstrates that Rank Xerox cannot be considered to have inflicted injury upon itself through its purchase and resale of machines from Fuji Xerox.

(63) With respect to the possibility that injury was caused by Rank Xerox to other Community producers through the resale of photocopiers supplied by Fuji Xerox at dumped prices, the evidence showed that when account is taken of the different features of these models and the comparable Community-produced model, the Rank Xerox resale prices were in general below those of the Community producer concerned and must therefore be considered to be injurious to that producer. It follows, therefore, that the effect of these imports should be taken into account in assessing the injury to other Community producers.

(64) Finally, on the question of whether Rank Xerox acted in order to protect itself against low-priced competition from Japanese producers, the Commission reviewed the evidence supplied by interested parties, including that submitted by Rank Xerox itself. Whilst the company maintained that a major factor in its decision to purchase low-volume photocopiers from its affiliate in Japan from 1978 onwards was the low price prevailing on the Community market which had been set by Japanese exporters, no convincing evidence was advanced in support of this statement. Independent sources suggest, on the contrary, that the decision may have been due more to internal difficulties which the Xerox Corporation as a whole experienced in producing new low-volume products. Faced with this situation, Rank Xerox turned to Fuji Xerox which had developed a low-volume model (2202) for sale in Japan and imported this product into the Community. This model replaced Rank Xerox's former Community-produced model (660) but was not itself produced in the Community.

(65) This initial supply link with Fuji Xerox was short-lived and was superseded in 1979 by the pattern of supply arrangements described in recital 53. The purpose of such supply arrangements has evidently been to enable Rank Xerox to prepare for and to accelerate the marketing of new products in advance of their manufacture in the Community as Community products. While it cannot be said that Rank Xerox was obliged to purchase machines from Fuji Xerox for self-defensive purposes, it is clear that in current circumstances in which the low-volume end of the market is dominated by Japanese suppliers, the ability to bring to the market a product more quickly than by waiting for Community production to come on-stream has enabled the company better to defend its overall position.

(66) Even if the company's activities in importing were not considered to be self-defensive, the low volume of supplies from Fuji Xerox in terms of Rank Xerox's total range of photocopiers in the Community is a decisive factor in favour of the view that there are no reasonable grounds for excluding the company's production of low-volume copiers from the definition of Community industry in the proceeding by virtue of its purchase of complete PPCs from Fuji Xerox.

(67) In summary, and having taken account of the particular circumstances of the case, the Commission considers that under Article 4 (5) of Regulation (EEC) No 2176/84, Rank Xerox should be considered to be a Community producer of photocopiers for the purposes of this proceeding.

(b) *Position of Tetras*

(68) In November 1986, Tetras, a member of CECOM and producer of a personal copier in the Community, established a relationship with Canon, a Japanese exporter, whereby Canon took a 19 % shareholding in Tetras with an option to purchase an additional 30 % of the company's stock from other investors within a pre-set time limit. The minority shareholding relationship with Canon has not affected Tetras' position either as a Community producer or as a complainant and consequently Tetras remains part of the Community industry for the purposes of this proceeding.

(c) *Position of Océ and Olivetti*

(69) As regards the position of Océ and Olivetti, representations were made by a number of exporters and OEMs to the effect that these companies should be excluded from the scope of Community industry in the proceeding under Article 4 (5) of Regulation (EEC) No 2176/84 on the basis of their links with Japanese suppliers. It was argued, in essence, that the scale and long tradition of these companies' links with Japanese suppliers precluded them from being considered as Community producers in the proceeding.

(70) With respect to the relative importance of these companies' links with Japanese suppliers, the data show that for Océ and Olivetti, sales in the Community of imported machines represented between 35 and 40 % of each company's sales and rentals of new machines placed in the market over the period 1981 to July 1985. Models imported from Japan by Océ for resale have been segment 1 and 2 copiers with lower prices than those of Océ's own-produced machines. Olivetti has imported predominantly segment 1 copiers over the period 1981 to July 1985, but since 1984 has also purchased personal copiers from Canon.

(71) The question of whether Olivetti and Océ could have caused injury to themselves through actions in importing dumped PPCs was dealt with extensively in Regulation (EEC) No 2640/86. The Council confirms these findings and considers that these companies should be included in the definition of Community industry for the following reasons:

— Both companies attempted, at various times, to develop and market a fuller range of models but were thwarted in their attempts to do so because of depressed market prices set by Japanese imports. This is evidenced by management evaluations of projects and full documentation in one case of a prototype model scheduled for introduction to the market.

— The companies' resort to distribution of Japanese-manufactured machines on an OEM basis was a response to the need to offer a full range of models to their customers. By doing so, the companies were clearly protecting customer bases against competition from other suppliers who were able to offer a full model range.

— Over the period 1981 to the end of the reference period, the companies sold and rented far more units of their own manufactured products than those of imported PPCs.

— The prices at which the two companies resold the imports on an OEM basis were in general higher than those of the same machine sold by their suppliers on the Community market, thereby discounting the possibility that Océ and Olivetti could have inflicted injury upon themselves via their pricing policy, and supporting the argument that these OEM sales were subsidiary to and aimed at facilitating the placement of their own-manufactured machines.

— The very small volume of Océ's and Olivetti's OEM imports in relation to total imports of all Japanese-produced machines (average of 4 % over the period 1981 to 1985), and the fact that they were sold at higher prices than those sold by their suppliers, demonstrates that these limited imports could not have had detrimental effects on the prices of their own and other Community producers' own-manufactured PPCs.

In conclusion, the Council confirms that within the context of this proceeding Océ and Olivetti did not injure themselves in importing low-cost PPCs from Japan for distribution on an OEM basis.

(72) Finally, the Commission's argument in recital 73 of Regulation (EEC) No 2640/86 that Océ and Olivetti could be considered to have done nothing which caused them to suffer losses greater than they would have suffered if they had attempted to base their own PPC business on the marketing of a more limited range of models was challenged on grounds of the lack of evidence justifying this conclusion. In response the Council points to the difficulties experienced by companies past and present to base their photocopying business on the marketing of a limited range of models and the need, emphasized by nearly all successful producers, to be in a position to respond to a customer's total copying needs. These considerations support the conclusions of the Commission.

(73) In conclusion, the Council confirms that Océ and Olivetti should be included in the definition of Community industry for the purposes of the proceeding.

(d) *Position of Develop*

(74) Develop, a Community producer of photocopiers, was effectively taken over in May 1986 by Minolta, a Japanese exporter, and subsequently withdrew its support for the complaint. While Develop continues to be a producer the question arises whether it should be considered as part of Community industry for the purposes of injury assessment. In the view of CECOM, Develop should be included since, during the reference period and before, the company was injured by the dumping practices of Japanese exporters.

(75) The Commission takes the view that, since it withdrew its support for the petition, Develop should no longer be considered part of the Community industry for the purposes of this proceeding. As to the argument that injury allegedly suffered by Develop in the reference period and before should be taken into account, the Council confirms the Commission's position that remedies to counter dumping practices can only be applied to offset injury caused to those producers defined as constituting the Community industry in the proceeding. It follows, therefore, that it would be illogical in determining the measures to be applied to take account of injury allegedly suffered by a producer not considered as part of the industry. Consequently Develop is not considered part of the Community industry for the purposes of this proceeding.

(e) *Position of Canon*

(76) Representations were made to the Commission by Canon that the Community industry should be defined to include not just the complainants but also Canon Giessen and Canon Bretagne — producers of photocopiers in the Community — but which do not support the complaint. The Commission considers that since the complainants form a major proportion of the industry, irrespective of whether Canon's subsidiaries are included or not, then it is sufficient in the proceeding to assess whether injury has been caused to this major proportion of the industry.

(f) *Conclusion*

(77) In summary, the Community industry for the purposes of this proceeding is defined to be the Community producers, Rank Xerox, Olivetti, Océ and Tetras, who manufacture photocopiers in the Community.

(iv) Impact of the dumped imports on Community industry

(78) In its provisional findings the Commission stated that on the evidence available no injury had been caused to Community production of segment 5 machines but that, since Japanese exporters had begun exporting higher volume copiers since the end of the reference period, the question of whether such sales threatened to cause injury to Community producers remained to be addressed.

In response to these findings, the complainants contended that material injury had in fact been caused to segment 5 copiers and argued that the Commission's conclusion was at variance with its view that machines from adjoining segments could be considered like products and hence competing products on the market. It was argued that since imports of segment 4 copiers were injuring Community production of segment 4 machines then, according to the Commission's reasoning, there was also an impact on segment 5 copiers. The complainents also argued that there was a threat to Community production of both segment 5 and 6 copiers.

(79) In considering these arguments, the facts show that, up to the end of the reference period, Japanese exports of PPCs to the Community were concentrated in segments personal copier to 4 of the Dataquest classification. No exports of segment 5 machines took place until after the reference period.

With regard to the allegation that actual injury had been caused to Community production of segment 5 machines, the Commission examined whether there was any evidence of such injury. In the first place, it was observed than Rank Xerox, the only Community producer supplying machines in segment 5, held a predominant share of the market up to and including the reference period and faced competiton in that segment only from two US suppliers, Kodak and IBM. In addition, no evidence was supplied demonstrating a shift of sales away from segment 5 towards other segments by virtue of dumped lower prices. Indeed, from the information available to the Commission, there was a faster growth in placements of segment 5 machines than of segment 4 machines. As regards evidence of price depression, the evidence supplied was inconclusive and did not demonstrate that the fall in prices was caused by low-priced Japanese exports of segment 4 machines. In the light of these factors, the Council considers that there is insufficient evidence to demonstrate that material injury had been sustained by Community producers of segment 5 machines up to the end of the reference period.

(80) With regard to the threat of injury, the complainants argued that Japanese exporters had begun supplying segment 5 copiers since the end of the reference period and that several had announced plans to become fully integrated suppliers and take a market share in this segment away from Rank Xerox.

In looking at whether a threat of material injury exists, the Commission was guided by the factors listed in Article 4 (3) of Regulation (EEC) No 2176/84, in particular item (a) relating to the rate of increase of dumped exports to the Community. In reviewing the evidence, the Commission concluded that there was little evidence to demonstrate that such machines manufactured in Japan had increased their share of the market rapidly since the end of the reference period.

As regards the export capacity of the exporters for the photocopiers in question, no evidence was supplied to the Commission. Certain press information stating that one Japanese manufacturer had plans to produce these copiers in the Community was supplied but this relates to Community production and not Japanese exports.

In summary, on the evidence available, the Commission concludes that there is insufficient evidence of a threat of injury to Community production of copiers classified in segments 5 and 6 of the Dataquest classification.

(81) With regard to the impact of the low-priced imports, an analysis of the profitability of the three largest Community producers (Rank Xerox, Océ, Olivetti) shows that net profit before tax on their sales of machines and on the machine component of rental revenues (see recital 107 below) taken together progressively declined over the period 1983 to end July 1985. The weighted average net profit before tax for the three producers together on their own-manufactured machines classified in segments 1 to 4 is estimated to have fallen from 8 % in 1983 to around 4 % in 1984 and the reference period. The results of the individual companies concerned were mixed. Whereas in one case net profit before tax remained virtually unchanged at around 5 % of turnover, for the other two companies profits showed a strongly falling trend, declining from around 8 % of turnover in 1983 to 2 % for one company during the reference period, and from 13 % to a loss of 5 % for another. These differences in profit levels reflect the different areas of concentration of the three complainants' business in the photocopying market.

(82) Reduced profits threaten the ability of Community producers to undertake the research and development expenditure necessary to develop new products to compete in the future with Japanese exporters on the Community market and to promote their products through advertising and sales promotion expenditures at levels sufficient to match those of their Japanese competitors.

(83) Other effects resulting from the low profitability and the continuation of depressed prices referred to in recitals 82 to 84 in Regulation (EEC) No 2640/86 are confirmed by the Council. The inability to benefit from increased economies of scale in particular is perceived as a major handicap to Community producers.

(84) With regard to the possibility that injury may have been caused by factors such as the volume and price of undumped imports or a stagnation in demand, the Council confirms the Commission's proviional findings that such factors played no role in the context of the proceeding.

(85) As to the possibility that injury to the complainants might have been due to other factors, the commission examined the position of each company to see whether there were factors which could have explained these difficulties.

With regard to Rank Xerox, as stated under recital 64, internal problems within the Xerox Corporation as a whole accounted at least in part for the difficulties the company experienced in bringing a new low-volume product to the market to replace the 660 model in 1978. The problems in Xerox were tackled in a major way in 1980/81 following advice from independent management consultants which led to the reorganization of the company into business units, and improvements in reliability and in efficiency in bringing new products to the market at lower cost. In the latter context, a rationalization of the company's subcontractor base and efforts to reduce costs to the levels of competitors' costs played a significant role.

These major managerial and business improvements, which took several years to implement, culminated in the launch of the company's '10' series products in 1982/83. These products formed the basis for Rank Xerox's attempt to re-establish its competitive position in the market.

While product-related problems could justifiably be cited as a major contributory cause to the company's problems in the past, such a factor cannot be retained as a valid explanation since the implementation of the changes described above. Thereafter the material injury caused to the company is attributable to other factors. In the Council's view the underlying cause was the low-priced competition from Japanese competitors which, in the reference period, was shown as being based on dumped prices.

(86) With regard to Océ and Olivetti, no convincing evidence has been submitted to confirm arguments put forward by the exporters and OEMs that any injury suffered by these companies was attributable to their late start in embracing plain paper copier technology. In the case of Tetras, certain start-up difficulties were experienced at the commencement of its operations, but the company was also injured materially by the dumping practices of Japanese companies selling personal copiers which undercut its prices and hindered its attempts to establish a foothold in the market.

Submissions arguing that the high share of the market of Japanese exporters was due to the alleged superiority of Japanese manufactured machines over those produced by Community producers were not supported by convincing evidence except in respect of multiple features. As regards the range of machines, the evidence suggests that the Community producers as a whole manufacture as wide a range in terms of copy speed as that of their competitors. With regard to quality and reliability, no evidence was produced that indicated that Community machines as a whole were inferior or required more servicing. Nor was there any indication that Community producers' after-sales service was inferior compared with that of their Japanese competitors.

(v) Conclusion

(87) The Commission reaffirms its provisional findings that the volume of dumped imports, their market share, the prices at which they were offered for resale in the Community and the loss of profit suffered by the Community industry leads to the conclusion that the effects of dumped imports of PPCs from Japan taken in isolation have caused material injury to Community industry.

The Council confirms this conclusion.

I. COMMUNITY INTEREST

(88) In assessing whether it is in the Community's interests to impose anti-dumping measures on imports of PPCs from Japan which have been shown to be dumped and to cause material injury to the complainant Community industry, the Commission has considered the views of all the Community producers, Japanese exporters, and importers in the Community, notably the OEMs.

Where such interested parties have made submissions on the question of Community interest following the imposition of provisional measures, these submissions have generally not introduced new facts or arguments on this question but have merely been supplementary to the points previously raised.

(89) Consequently, the Commission continues to hold the view as expressed in recital 93 of Regulation (EEC) No 2640/86 that the elimination of injury caused by dumping is important to the continued survival as PPC manufacturers of at least certain of the remaining complainant producers. The evidence available to the Commission and in particular the recent takeover by one of the Japanese exporters of one of the CECOM members suggests that unless anti-dumping measures are taken, the continuance of an independent Community industry even in its present reduced form is likely to be in doubt. In addition, it is clear that the photocopier industry will continue to form a key part in the office equipment industry as a whole and that the retention and development of the technology currently employed will be essential for the development of future reprographic products. The Council confirms these views.

(90) As far as the OEMs are concerned, all the large companies have continued to argue, as stated in recital 94 of Regulation (EEC) No 2640/86, that the imposition of definitive measures would put at risk their survival as distributors of PPCs and other related products in the Community, and in some cases their continued presence in the Community in reprographic products other than PPCs. Some OEMs have suggested that account should be taken of their position by the imposition of measures which would be specific to the individual OEMs either in their capacity as importers, or in some cases as exporters, when the PPCs are actually purchased by the OEMs in Japan.

(91) The Commission has fully considered all these arguments. In the first place, the Commission has received no satisfactory evidence to suggest that the imposition of definitive anti-dumping measures in themselves would jeopardize the continued existence of any of the OEMs which are, in any event, vulnerable to the setting-up of new distribution systems and manufacturing facilities in the Community by Japanese producers and have, as a whole, lost their market share in the Community to Japanese 'own-brand' machines. The Council confirms this view.

(92) As regards the imposition of separate measures relating to the imports by OEMs, two issues arise. First, can measures be taken which are specific not to the exporters concerned but to the importers of the products, and secondly, can any of the OEMs be treated as exporters of the product concerned ?

There seems to be no legal justification either to impose measures which are specific to importers or to treat any of the OEMs as exporters for whom separate dumping margins could be calculated.

Dumping margins were calculated, in the present case, on the basis of a comparison of prices of each exporter concerned, and the dumping margins thus established were, accordingly, specific to each individual exporter. As a result, any approach which imposed measures which were specific to a particular category of importers would be complex, open to circumvention and probably unworkable. This would be true of any arrangement under which OEMs paid a duty at rates lower than other importers. It would be inappropriate for OEMs to be able to purchase from any exporter and pay the same level of duty irrespective of the level applicable to the exporter concerned. In any event, the Commission does not consider the fact that the OEMs resell imported products under their own brand names to be sufficient reason to justify separate treatment for OEMs in comparison with other importers.

A number of OEMs have claimed that they export the product from Japan and could accordingly be treated, for the purposes of imposing measures, in a similar way to the Japanese producers. This approach would, however, also be inappropriate. It is clear that, even if the OEM physically exports the product, that product is sold to the OEM for export and consequently the price paid for export to the Community is the price paid by the OEM to the Japanese producer concerned. It would, accordingly, be inappropriate to exclude these sales from the calculation of the dumping margin for the exporter concerned, especially if such exclusion may, as is possible, increase the dumping margin for that exporter.

(93) The Commission continues to be of the view, therefore, that, in the present case, the imposition of a definitive anti-dumping duty is required to ensure the continued existence of at least certain of the remaining Community PPC producers with the consequent benefits to the Community of employment, technological expertise and local source of supply, and this would, on balance, be more in the Community's interests than favouring Community importers or distributors which have been, to a considerable extent, dependent on the injurious dumped imports. In addition, the Commission can see no legal justification for imposing anti-

dumping duties at different levels on imports of products from the same Japanese producer. The Council confirms this view.

(94) A number of exporters and importers have repeated allegations that the imposition of definitive anti-dumping measures would reduce competition in the Community by increasing the risk of creating oligopolistic market conditions with potential detrimental results to the Community consumers in terms of supply and price. The Commission has received no evidence in support of these allegations. Indeed, the evidence available to the Commission would seem to lead to the opposite conclusion that, without the imposition of anti-dumping measures, the number of competitors in the market will be reduced. This is particularly the case regarding certain of the complainants who may be vulnerable to a takeover similar to that of one of the original complainants by one of the exporters during the proceeding. In addition, six of the nine exporters who could realistically be interested in manufacturing in the Community are either already doing so or have indicated that they will do so in the near future. There is also no indication that the number of Japanese suppliers to the Community will be reduced. Accordingly, the allegation that anti-dumping measures may have an anti-competitive effect in this case seems to be without foundation.

(95) The Council confirms the Commission's view on Community interest as stated in recitals 101 and 102 of Regulation (EEC) No 2640/86.

(96) The Commission has received no evidence to suggest that the overall effect on employment in the PPC business in the Community as a whole caused by the imposition of definitive anti-dumping measures would be anything other than limited.

(97) A number of exporters and importers, especially OEMs, have suggested that, if measures are to be imposed, then these measures should be restricted to protect what could be considered genuinely a Community industry and should not protect products which comprise a large proportion of imported components. This suggestion arises from the fact (as referred to in recital 54) that Rank Xerox, the largest of the Community producers of low-volume (segments 1 and 2) PPCs, uses, in its production of these PPCs, a considerable proportion of components imported from Japan. The Council, in taking account of the point made in recital 89 above, and also the fact that in the present case the cost of the products concerned does not, in general, significantly affect the overall profits of the users in the Community of those products, does not consider it reasonable to exclude products from the benefit of protective measures merely because they may have a relatively low added value in the Community. In any event, two complainant companies other than Rank Xerox manufacture PPCs in the low-volume area, which have a higher level of added value in the Community than the Rank Xerox machines and, should no measures be taken in this area, these companies would also be deprived of measures protecting them against the injurious effect of the dumped imports.

The Council confirms this view.

(98) The Council also confirms the Commission's provisional findings as stated in recital 104 of Regulation (EEC) No 2640/86 on any price increase which is likely to follow the imposition of measures.

(99) In conclusion, and having considered the various arguments of all the interested parties, the Council has confirmed the Commission's findings that, on balance, it is in the Community's long-term interest to eliminate the injurious effect to the Community industry concerned of the dumped Japanese imports, and that the benefits of such protection clearly outweigh any effects, particularly on price, which could be said not to be in the interests of the consumer.

J. UNDERTAKING

(100) Kyocera, a Japanese exporter who ceased exporting to the Community after the reference period offered a revised undertaking concerning its future exports to the Community.

After consultation with the advisory committee, the Commission accepted the revised undertaking offered by Kyocera. The investigation was thereby terminated with respect to this company.

Undertakings were also offered by two OEMs.

In accordance with its traditional practice of not accepting undertakings from importers (see recital 92) and being unable to consider any of the OEMs as exporters for this purpose, the Commission, after

consultations with the advisory committee, informed the two OEMs concerned that the undertakings could not be accepted.

K. DUTY

(101) As in the case of the provisional findings, it was considered appropriate to impose a level of duty below that of finally determined dumping margins, because such lesser duty would be adequate to remove the injury caused by the dumped imports. To calculate this duty, the Commission considered it appropriate and reasonable to fix the level of duty at a level sufficient to enable Community producers to earn a 12 % profit before tax on their 'sales' of machines. Profit on sales in this context signifies profit on outright sales of own-manufactured machines to end-users and dealers plus profits arising from the machine component of rental revenues.

(102) The choice of a 12 % return on sale (ROS) in Regulation (EEC) No 2640/86 was challenged by the exporters and OEMs as being too high and by the complainants as being too low.

In addition, it was argued that, as the Commission had recognized itself in Regulation (EEC) No 2640/86 (recital 10), machines are often sold at a loss or with minimal profit, the return being made on the subsequent sale of consumables.

As regards the complainants, it was argued that in order to be in a position to attract capital to finance the business successfully, photocopier manufacturers needed to earn a return of at least 18 % on their business assets as a whole. With an asset turnover (sales turnover divided by assets) of unity, the return on assets figure translated into an 18 % return on sales. It was further argued that even if machines were looked at separately from their consumables and supplies business, the required rate of return should be at least 18 %. CECOM also attempted to demonstrate that an 18 % ROS figure was consistent with the requirements of an integrated supplier, i.e. one who manufactures, distributes and sells photocopiers at retail level.

(103) The Commission's choice of a figure of 12 % rate of return was an estimation of the return required to enable the Community producers as a whole to :

— safeguard their position on the market in the future by permitting them to undertake adequate research and development expenditure and to promote their products,

— provide for a reasonable rate of return commensurate with the risk of developing new products and allow for a reasonable return to shareholders.

In choosing the figure of 12 % the Commission also took account of the structure of the Community industry, in particular that Rank Xerox and Océ acted as fully integrated producers whilst Olivetti sold predominantly to dealers. Furthermore, if it were appropriate to visualize minimum returns of profit separately for manufacturing, distribution and retailing operations of Community producers, it would be unreasonable to envisage rates of return of below 5 % for each activity. Such rates of return are broadly consistent with an overall rate of return of 12 %. These minimum rates of profit are consistent with the choice of a rate of profit of 5 % applied to Japanese distributors in the context of reconstructing export prices, and to dealers where adjustments to their prices were required (recitals 16 and 107).

In addition, the Commission also took account of the fact that the producers' sales volumes were significantly different and that, whereas a higher target ROS figure could be justified for low-volume producers, this needed to be offset against the lower requirements of higher volume producers.

(104) With respect to the complainants' argument that an 18 % ROS was the appropriate figure for machines, the Commission considered that this figure incorporated the higher profits generally made on consumables and supplies business and therefore was inappropriate for machines alone. Although the complainants attempted to demonstrate that an 18 % ROS on machines alone was still justifiable, the Commission considered that the evidence put forward was inconclusive and in some cases inconsistent with earlier submissions.

(105) As to the argument that the 12 % ROS is too high, the Commission received little evidence from either OEMs or exporters supportion their view, or proposals on an appropriate figure. As outlined above, the Commission considers the producers'

current depressed returns to be too low. Furthermore, the Commission can see no reason why, as the exporters appear to be suggesting, profits should be made only on consumables and supplies.

(106) In conclusion, and for the reasons outlined above, the Council upholds the view of the Commission that a 12 % ROS is a reasonable and fair target figure to be applied to Community producers for the purposes of assessing the duty in the proceeding.

(107) The duty required to offset the injury being caused to Community producers of PPCs was calculated in the following way:

(i) For each type of transaction concluded between Community producers and their customers (i.e. rentals, end-user sales, dealer sales), a profit and loss account was calculated for each machine from audited and internal management data for the reference period (January to July 1985). This period was considered to be a representative period for analyzing the financial performance of the complainants. No data were included in the calculation for Tetras, as before, since the company had not been trading for a full financial year and hence no audited accounts were available. With respect to rentals, which have to be examined separately, the Commission considered it would be inappropriate to ignore this type of transaction in the calculation in view of their overall importance in value terms and accordingly requested Océ, Olivetti and Rank Xerox to produce estimated profit-and-loss accounts for the machine component of rental transactions.

Océ and Rank Xerox supplied these data by dividing rental revenues into machine, servicing and financing components and calculating the costs associated with the machine component in accordance with company accounting information. Costs were generally allocated on a turnover basis.

Both companies claimed that the financing component should be considered a separate profit centre and hence costs should be allocated *pro rata*. The Commission rejected this view on the grounds that the primary purpose of the financing was to facilitate the machine placement, not to make a separate profit.

For the purposes of calculating the duty in this proceeding no estimates have been included for the hardware component of Olivetti's rental business since it was not possible to produce financial data on the same basis as for Océ and Rank Xerox. This exclusion has no impact on the calculation in view of the smallness (less than 1 %) of Olivetti's rental business when compared with CECOM's overall sales of photocopiers (including the hardware component of rental revenues).

(ii) A final figure of profit before tax expressed as a percentage of turnover (return on sale) was determined for each machine for each type of transaction. The results for each machine were cumulated to produce one profit-and-loss account (and return on sale) for that transaction type, for each producer, for all machines in segments 1 to 4 of the Dataquest classification.

(iii) On the basis of the ROS calculated for each sales channel, a calculation was made to determine by how much each Community producer's revenues would have to increase in order for a 12 % rate of return to be made for each type of transaction.

(iv) Since Japanese-related subsidiary companies sell predominantly to dealers in the Community, an adjustment was necessary to bring the target increase in revenues for the Community producers who sell at end-user level down to dealer level. The factor necessary to bring this adjustment about was identical to that outlined in recital 53 of Regulation (EEC) No 2640/86 which was used to render sales prices of Japanese-produced and CECOM models comparable.

(v) The increase in target revenue at dealer level for each transaction type for each company was then weighted by turnover by type of transaction to give a weighted average increase in revenues for Community producers as a whole. This increase was 13 %.

(vi) A factor representing the average costs between importation and resale to dealers was added to the total cif turnover of Japanese exporters' sales to related subsidiaries in the Community. This factor of 35 % represents the average costs incurred between importation and resale for those Japanese subsidiaries who sold to dealers in the Community during the reference period and for whom the costs between importation and resale could be easily identified. The costs of those subsidiaries taken into account in this calculation were considered representative of those between importation and resale for Japanese subsidiaries as a whole.

(vii) The figure of 13 % explained in (v) above of the aggregate figure described in (vi) represents the absolute amount by which it is appropriate to increase Japanese subsidiaries' prices to dealers. This absolute amount expressed as a percentage of the total cif turnover of Japanese exporters' sales to related subsidiaries in the Community represents the *ad valorem* duty at the frontier necessary to offset the injurious effects of dumping.

The final calculation showed the appropriate *ad valorem* duty to be 20 %.

(108) The methodology adopted by the Commission for determining the duty in the proceeding is based on two assumptions. On the one hand, the increase in revenue takes no account of any increase in market share and economies of scale that CECOM members may benefit from as a result of the increase in duty. On the other hand, no element has been included in the calculation to take account of price undercutting effects, i.e. the increase in revenue required to enable Community producers to earn a 12 % ROS was calculated as a percentage of the actual prices achieved by them in the market during the reference period and did not include an additional element to account for the difference between these prices and the generally lower resale prices of Japanese-related companies.

(109) With regard to the first point, the Commission considers that, since the purpose of the measures is to offset the injury currently being caused to Community producers as a result of dumping, these measures must focus on remedying the existing injurious situation. It would be impossible to take any future increase in market share or economies of scale into account since the Council cannot foresee how the Community producers will respond to market developments resulting from the imposition of duties. It goes without saying, however, that a review on grounds of changed circumstances under Article 14 of Regulation (EEC) No 2176/84 could be justified if sufficient evidence demonstrating an over-compensation of injury were to be advanced.

(110) With respect to the argument that the increase in revenue should be calculated to take account of the generally lower resale prices of Japanese subsidiaries, the Council has concluded (recital 49) that, while price undercutting undoubtedly exists on the market, it is transient in nature, relatively small and frequently takes the form of unquantifiable 'features' undercutting. Given the nature of this undercutting, the Commission does not consider it feasible to arrive at a single percentage figure representing the average undercutting by all exporters. As a result the Commission decided that it would be inappropriate in the context of this proceeding to include an element in the duty calculations to take account of the type of price undercutting determined in the proceeding.

(111) The question was also raised as to whether the Commission's global approach to the calculation of the duty failed to provide sufficient sanctions against companies found to be dumping at the highest rates.

The Council considers, however, that as laid down under Article 13 (3) of Regulation (EEC) No 2176/84, anti-dumping duties should be less than the dumping margins found if such lesser duty would be adequate to remove the injury. In this proceeding such a lower level of duty was found to be sufficient to remove the injury being caused to Community producers and will accordingly be applied to those producers whose dumping margins are greater than or equal to the threshold established.

(112) In addition, one exporter argued that the Commission's approach to the calculation of the level of duty was unfair to it because the average of all exporters' costs between importation and resale used by the Commission in the calculations was higher than those costs for the exporter in question. This argument is not accepted by the Commission.

It would not be appropriate to calculate different rates of duty for each exporter, based on injury considerations (as distinct from dumping margins), without taking into account the fact that different

models produced by each exporter injured the prices of the Community models with which they compete most directly by different amounts. However, it has proved to be impossible to calculate different rates of duty for each model produced by each exporter, both because precise comparisons between models with different features cannot be made and because Japanese models do not compete only with specific Community models.

In such circumstances the Community institutions have concluded that it would not be appropriate nor indeed possible to calculate, for each exporter, a weighted average price increase representing the amount needed to enable Community producers to earn 12 % on those of their models which compete with those of the exporter concerned. As a result, it was concluded that the only meaningful way in which to express the overall revenue increase required by Community producers to earn a 12 % rate of return would be to calculate a global figure not particularized by exporter. In such circumstances the Commission considers that since it was not possible to quantify the injury caused by each exporter individually, it would be inappropriate to allocate the impact of injury caused to Community industry merely on the basis of differences in costs between importation and resale of Japanese exporters. The costs incurred between importation and resale in the Community by an exporter's subsidiary are not a crucial factor as regards the amount of anti-dumping duty to be paid since this amount is a function of the price at the Community frontier.

(113) One exporter argued that in calculating the duty the Commission should take account of the profitability on the complainants' total machine sales. Thus it was argued, the increase in revenue required to enable a 12 % return on sales to be made should be calculated both on machines purchased on an OEM basis or for direct distribution from Japanese exporters as well as on own-manufactured products.

The Commission considers this approach illogical since the purpose of the measures is to eliminate the injury being caused to producers in the Community of the like product. Since Community producers do not manufacture products which they sell on an OEM basis, injury arising, if at all, from such operations cannot be taken into account.

(114) In conclusion, it was considered appropriate that the amount of definitive duty to be imposed should be 20 % for the exports of all companies for whom a dumping margin equal to or higher than this percentage had been found. For the remaining companies, the definitive anti-dumping duty should equal the dumping margin established.

(115) The definitive anti-dumping duty should apply to all models of plain paper copiers from Japan with the exception of those machines classified in Dataquest segments 5 and 6.

As in the case of the Commission's provisional findings as set out in recital 113 of Regulation (EEC) No 2640/86, the Council considers that the appropriate criterion to be applied on determining which plain paper copiers shall be covered by the measures is the machine speed. With respect to the cut-off point, this was set in the provisional findings at 70 copies per minute, slightly below the maximum speed of segment 4 copiers of 75 copies per minute. On reconsideration of this cut-off point, the Council has come to the conclusion that, despite the slight overlap with segment 5 copiers, the measures should apply up to the maximum speed range in segment 4, the more so as the Council has reason to believe that certain exporters are now supplying segment 4 machines to the Community market which are capable of producing 70 copies per minute. Since models in this segment have been deemed as injuring the Community industry, duty should be collected on them. Accordingly, definitive anti-dumping duties shall not be applied to plain paper copiers from Japan having the capacity to operate at a copy speed greater than 75 copies per minute.

(116) The complainants argued that a risk of circumvention of the duties exists since according to a laboratory analysis undertaken for Rank Xerox by its parent company, the speed of some copiers can be upgraded by 35 % or more without major design changes, thereby increasing machine speed beyond the 75-copy-per-minute threshold. While the concerns expressed by the complainants on this point are not without a certain merit, at least from a theoretical point of view, the Commission considers nonetheless that the evidence submitted in support of CECOM's claim to be insufficient to provide a basis on which to justify an increase in the threshold of beyond 75 copies per minute.

(117) In the course of the proceeding it has emerged that subheading 90.10 A of the Common Customs Tariff within which plain paper copiers fall, includes other copying machines of varying functions and uses which were not subject to the proceeding. It is therefore necessary that these products, broadly defined to be colour copiers, engineering and architectural copiers, micro-printer readers and whiteboard copiers should be excluded from the scope of the measures.

(118) Finally, the Council ascertained that the maximum customs duty in force in Spain on plain paper photocopiers in 1986 and 1987 exceeded the Common Customs Tariff duty on the same product. In order to prevent imports into this Member State bearing higher overall duties than in other Member States it was felt appropriate to ensure that the combined effects of the Community anti-dumping duty and the unaligned tariff in Spain should not exceed the combined amount of the Common Customs Tariff and the anti-dumping duty.

L. COLLECTION OF PROVISIONAL DUTY

(119) In view of the importance of the dumping margins found and the seriousness of the injury caused to Community producers, the Council considers it necessary that amounts secured by way of provisional anti-dumping duties should be collected, either in full or to a maximum of the duty definitively imposed in those cases where the definitive duty is less than the provisional duty. With respect to the collection of provisional duties for Spain the same arrangements apply as set out in recital 118 above.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of plain paper photocopiers incorporating an optical system falling within subheading 90.10 A of the Common Customs Tariff, corresponding to NIMEXE code ex 90.10-22 and originating in Japan.

2. The rate of duty shall be 20 % of the net free-at-Community frontier price before duty, with the exception of imports of the products specified in paragraph 1 of this Article which are manufactured and exported by the following companies, the rates of duty applicable to which are set out below:

	%
— Copyer Company Limited, Tokyo	7,2
— Mita Industrial Company, Osaka	12,6
— Toshiba Corporation, Tokyo	10,0

3. The duty specified in this Article shall not apply to products described in paragraph 1 exported by Kyocera Corporation, Tokyo.

4. The duty specified in this Article shall not apply to

— those products described in paragraph 1 which have the capacity to operate at a speed of more than 75 copies per minute of A4 size paper,

— the following products:

  — aperture card reader printers and microfilm printers (machines which have the capacity to read images from and make enlarged copies of microfilms, microfiches and aperture cards),

  — full colour copiers (machines which have the capacity to automatically make full colour copies from corresponding coloured originals in one copying cycle by means of a polychromatic process),

  — whiteboard copiers (machines which have the capacity to make copies from information displayed on screens),

  — large format copiers capable of making copies of A2 size and larger from originals larger than A2 size.

5. The provisions in force concerning customs duties shall apply.

Article 2

The amounts secured by way of a provisional anti-dumping duty under Regulation (EEC) No 2640/86 shall be collected at the rates of duty definitively imposed in the cases of Mita and Toshiba and at the rates of provisional duty applicable in all other cases.

Article 3

The anti-dumping duties imposed or collected pursuant to Articles 1 and 2 shall be collected on imports into Spain only to the extent that the amount of the customs duty in force in this Member State on the product in question plus the amount of the anti-dumping duty do not exceed the combined amount of the Common Customs Tariff duty and the anti-dumping duty on the same product.

Article 4

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, 23 February 1987.

For the Council

The President

P. DE KEERSMAEKER