COMMISSION REGULATION (EEC) No 2684/88

of 26 August 1988

imposing a provisional anti-dumping duty on certain imports of video cassette recorders originating in Japan and the Republic of Korea

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1] and in particular Article 11 thereof,

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

Whereas :

A. PROCEDURE

(1) In March 1987 the Commission received a complaint lodged by the European Association of Consumer Electronic Manufacturers (EACEM) on behalf of producers whose collective output was alleged to constitute a major proportion of Community production of the product in question. The complaint contained evidence of dumping of the product concerned originating in Japan and the Republic of Korea and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* [2], the initiation of an anti-dumping proceeding concerning certain imports into the Community of video cassette recorders (VCRs) corresponding to CN code ex 8521 10 39 originating in Japan and the Republic of Korea and commenced an investigation.

(2) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting countries and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

All exporters, some importers and all complainant Community producers made their views known in writing.

Submissions were also made by a number of dealers, end users and organizations representing Community purchasers of the product.

(3) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

(a) *Complainants :*

- J2T Video (Berlin) GmbH, Berlin, Germany,
- Telefunken Fernseh und Rundfunk GmbH, Hanover, Germany,
- Grundig AG, Fürth, Germany,
- Nokia-Graetz, Pforzheim, Germany,
- Philips International BV, Eindhoven, Netherlands,
- Ferguson PLC, Enfield, United Kingdom,
- Thomson Grand Public, Paris, France ;

(b) *Producers/exporters in the countries of origin :*

- Daewoo Electronics Co. Ltd, Inchon, Korea,
- Goldstar Electric Co. Ltd, Seoul, Korea,
- Samsung Electronics Co. Ltd, Gyonggi-do, Korea,
- Funai Electric Co. Ltd, Osaka, Japan,
- Orion Electric Co. Ltd, Kobe, Japan ;

(c) *Selling subsidiaries of the exporters within the Community :*

- Samsung Electronics GmbH, Steinbach, Germany,
- Goldstar Deutschland GmbH, Ratingen, Germany,
- Funai Electric Trading Europe GmbH, Hamburg, Germany,
- Goldstar UK, London, United Kingdom,
- Samsung Electronics UK, Surbiton, United Kingdom ;

(d) *Independent importers :*

- Amstrad Consumer Electronics plc, Brentwood, United Kingdom,
- Amstrad International Hong Kong, Hong Kong,
- Currys Group plc, London, United Kingdom,
- Dixons Ltd, Edgware, United Kingdom,
- ISP KG, Dreieich, Germany.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 256, 26. 9. 1987, p. 15.

(4) The Commission requested and received detailed written submissions from the complainant Community producers, the exporters and a number of importers, and verified the information therein to the extent considered necessary.

(5) The investigation of dumping covered the period from January to August 1987 inclusive (reference period).

B. SCOPE OF THE PROCEEDING

(6) The Commission opened the proceeding against all known Korean VCR producers and against two Japanese producers.

(7) The exporters argued :

— that this limitation of the scope of the investigation excluding imports from a certain number of other exporters was discriminatory,

— that a selective investigation would be a breach of Community legislation as well as a deviation from the Commission's established practice, and

— that there was *prima facie* evidence that other Japanese VCR producers were dumping and causing injury. The European industry excluded them from their complaint only because of their commercial links with other producers/exporters not covered by the complaint.

The Commission considers that these arguments are unfounded.

(8) The Commission decision to initiate the present investigation against exporters in South Korea and against Funai and Orion only was based on the complaint which was expressly limited to Korea and the two Japanese firms and which did not contain any evidence of dumping or injury from any other source. At this time there was no other evidence available to the Commission which would have indicated that other imports from Japan or other countries were dumped, or that they were causing injury. Under these conditions the Commission did not in any way behave in a discriminatory manner.

(9) The Commission is not legally required to always initiate anti-dumping proceedings against all exporters in a country concerned. There is nothing in Community law that requires the Commission to extend the scope of the investigation to all imports from a given country.

It is the Commission's practice to open investigations against all imports from a given country because, in most cases, the evidence available suggests that all imports from a certain country are dumped and are causing material injury. In the present case, not only did the evidence available not show this to be the case, but the complainant had expressly limited the complaint to certain exporters.

(10) The Commission naturally asked itself whether the complainants' request to limit the investigation to certain companies was abusive. Allegations that the complainants had filed the complaint selectively because of their links with other exporters were not considered convincing in this respect. Indeed, in other anti-dumping cases, the same complainant companies had not hesitated to lodge a complaint against Japanese companies with which they cooperated in other areas.

(11) As to the question of whether, subsequent to the initiation, the Commission should have extended the proceeding to include other exporters, the Commission has examined the information from the exporters about these allegedly dumped exports causing injury and found that there is no evidence at all for dumping on the basis of the data submitted which, apart from doubtful methodology, was neither supported by any documentation nor backed by any independent and representative market information. Nor is there evidence that the Community industry was prevented from charging prices including a reasonable profit in order to keep its market share in the face of competition from these other exporters.

Moreover, independent and representative market surveys available to the Commission showed no continuous price undercutting or gain of market share by these other suppliers as it could be found for the producers involved in the proceeding.

As to exports of VCRs from Austria produced by Philips and sold within the Community at the same prices as machines produced within the Community, the exporters themselves do not submit that these imports are causing injury.

(12) Notwithstanding, the Commission reserves the right to extend the proceeding at a later stage to include other imports, should the data available indicate that dumped imports from other sources are also causing injury to the Community industry.

C. PRODUCT UNDER CONSIDERATION

Within the context of this proceeding, a number of issues have arisen regarding the product under consideration and the definition of the like product.

(a) **Definition of product under consideration**

(13) The products under consideration are video cassette recorders (VCRs). These are devices which can receive a television signal broadcast by television stations and are able to record and playback the video and sound signals on/from a video cassette tape. When connected to a monitor or television set it is possible to view the recorded tape.

The heart of a VCR is the electromagnetic video tape deck through which the tape is guided and brought to slide along the video and sound recording heads for recording and erasing. The video heads are fixed onto a rotating drum which turns while the tape is running alongside it, using the principle of helical scanning. The audio heads are in fixed position describing a linear path running along the magnetic tape. The rotating drum, the tape and the cassette-insert function are driven by electric motors.

Apart from the tape deck, a VCR usually contains a power supply unit, a tuner to receive television signals from television stations, signal-processing circuits for picture and sound, control circuits for the operation and other circuits for optional extra features (e.g. picture improving circuits — HQ).

(b) **Like-product determination**

(14) VCRs are sold with numerous different features and combinations of features. Depending upon the features and brand name involved, VCRs can range from relatively inexpensive to expensive, professional quality machines.

Such features include :

1. the recording format such as Beta or VHS format,
2. the number of recording heads, which affect the quality of the recorded picture,
3. single or multiple recording and playback speeds, i.e. slow play (SP), long play (LP), and extended or super long play (EP or SLP),
4. 'pause' and 'slow-motion' features,
5. one-touch recording,
6. a variety of pre-recording features, such as the number of programmes and days in advance that a machine can be programmed for recording,
7. a variety of tuning features,
8. visual indexing,
9. graphic displays,
10. remote controls, wired or wireless, with varying features,
11. auto-rewind at the end of a tape,
12. a variety of sound quality recording, ranging from monophone to stereo to hi-fi and digital hi-fi,
13. automatic power-on,
14. various sizes of systems, including compact, portable models.

Apart from this, VCRs have to comply with different television standards in different countries. The basic systems are NTSC (USA, Far East and others), Secam (France) and PAL (Western Europe), each of which have substandards or can be combined in one television or VCR to facilitate the television reception from two or more countries.

In spite of this variety of different standards and features it is not called into question by any party that all these machines can be regarded as one like product using the same basic technology and serving the same consumer purpose.

(15) During the investigation two problems arose as to whether or not video cassette players (VCPs) and combination of VCRs or VCPs with a television set (in one housing) should be included in the scope of the proceeding.

The complainants argued that VCPs contained the same basic mechanism, apart from the tuner and the recording heads and, like a VCR, could be used to play video cassettes. They further allege that VCPs compete with VCRs in the market place and have therefore caused injury to the Community industry.

The exporters, however, point to the lack of recording capacity as a decisive difference and deny that a VCP is a substitute for a VCR from the customer's point of view.

The Commission has decided to exclude VCPs from the scope of the proceeding because the absence of a tuner and the recording facility limits the possible uses of VCPs. The user of a VCP cannot record televsion programmes but only play back prerecorded cassettes. It would therefore seem unlikely that for the normal private buyer of a VCR a VCP could be a substitute. The less expensive VCP would be of more interest for industrial, commercial or educational purposes, where a recording facility would not be necessary.

For these reasons VCRs and VCPs should be regarded as different products and there is insufficient evidence that these products compete with each other in the market.

Consequently, combinations of VCPs with a television set do not fall under the scope of this proceeding.

(16) On the other hand the Commission takes the view that combinations of a VCR and a television monitor in one housing are included in the opening notice and in the investigation subsequently carried out. These devices contain a complete VCR which generally has to be regarded as its major part. The combination of a VCR with a television monitor does not alter the identity of the VCR incorporated therein. Therefore the Commission reserves the right to propose to the Council that definitive duties be imposed on these goods as well.

D. NORMAL VALUE

(17) For exporters who sold comparable VCRs of their own brand in representative quantities in the ordinary course of trade on the domestic market normal value was provisionally determined on the basis of the weighted average domestic prices of each of these models.

(18) Where such models were sold in substantial quantities over the reference period on the domestic market at prices which did not permit recovery of all costs, the normal value was determined on the basis of constructed value.

(19) The constructed values were computed by taking, generally from the firms' accounting systems, 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. For each exporter the margin of profit was provisionally determined on the basis of its profitable sales of VCRs on the domestic market.

(20) In addition to own-brand sales, all exporters sold VCRs to OEMs (original equipment manufacturers), that is, importers who sold these products in the Community under their own brand names. These machines were generally of a different design and had partly different technical specifications from those sold under the exporter's own brand name. No sales of these OEM machines took place on the Japanese and Korean markets during the reference period and, accordingly, for the purposes of provisionally establishing normal values for comparison with export prices to OEMs, constructed values were used.

(21) In these cases 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 and Korean markets during the reference period, any difference in cost or profit could not be accurately assessed (see the 41st recital). However, Community legislation provides that constructed values shall be determined by adding costs 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.

(22) 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.

(23) Since no guidance can be gained from OEM sales on the Japanese or Korean markets 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 VCRs on the domestic market applied in other constructed values.

(24) As Orion, which had no domestic sales and which exported OEM brand and own-brand VCRs, did not cooperate to the extent necessary during the on-the-spot verification of the constructed valued no normal value could be established for this company.

(25) Certain firms supplied incorrect information. The Commission's on-the-spot investigation revealed that two Korean exporters had excluded certain domestic sales from their reply to the Commission's questionnaire. The quantities excluded amounted to up to 15 % of the quantities reported to the Commission and have consequently been taken into consideration for the establishment of the normal value.

(26) As regards costs of production of three exporters the Commission's on-the-spot verification revealed partial discrepancies between the companies' replies to the questionnaire and their internal documents. In these cases the Commission estimated the costs of production on the basis of the facts available.

E. EXPORT PRICE

(27) Where exports were made directly to independent customers in the Community export prices were

provisionally determined on the basis of the prices paid or payable for the VCRs sold for export to the Community.

(28) The Commission's investigation showed that the two Japanese exporters had incorrectly declared a large proportion of their exports as having been sold to third countries. However, from the customer names and the technical specifications of the VCRs, the Commission concluded that these exports were destined for consumption in the Community and they were, therefore, included in the provisional calculations.

(29) For four exporters the Commission's on-the-spot verification showed that they had not deducted certain refunds made to their independent customers in the Community from the export price. As the companies concerned could not give specific information on the amounts involved the Commission calculated them on the basis of the facts available. The amounts thus deducted on this basis ranged up to 15 % of the export price, depending on the model concerned.

(30) As Orion refused to cooperate in clarifying the above two points no export price could be established.

(31) When exports were made to subsidiary companies in the Community export prices were provisionally constructed on the basis of the prices at which the VCRs were first resold to an independent buyer, suitably adjusted to take account of all costs incurred between importation and resale and of a profit margin of 10 %, which at this stage was considered to be reasonable in the light of independent importers' results.

(32) In constructing export prices where allocations of costs to VCR sales were necessary, these were generally made on the basis of turnover. The costs and turnover used for this purpose were generally those of the related importers' financial year 1987. Some importers requested that certain costs should be allocated on a different basis. Only where the Commission received satisfactory proof that an alternative method would more appropriately reflect the costs incurred was such a method used.

These allocated costs included all administrative and other general costs including advertising, whether financed by the exporter or by the related importer. Discounts, rebates and value-free goods were, where possible, deducted with their actual value for each transaction concerned.

(33) Funai declared in its reply to the questionnaires that there were no sales via a subsidiary to customers in the Community. However, the investigation showed that Funai Japan owned a company in Germany called Funai Electric Trading (Europe) GmbH which, according to their accounts, purchased and resold VCRs to customers in the Community. Funai claimed that Funai Electric Trading (Europe) GmbH should be considered as an agent as it did not buy stocks and operated on a fixed gross profit margin. The investigation showed, however, that Funai Electric Trading (Europe) GmbH took the orders, negotiated and concluded selling contracts with its European customers under its own name and was the beneficiary of the letters of credit opened by its customers for the payment of the goods ordered. In the opinion of the Commission there can therefore be no doubt that Funai Electric Trading (Europe) GmbH fulfilled the normal functions of a selling subsidiary in the Community.

F. COMPARISON

(34) For the purposes 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, import charges and indirect taxes and differences in directly related selling costs where claims for these differences in the sales under consideration could be satisfactorily justified. All comparisons were made at ex works level.

(35) As regards differences in physical characteristics the Commission's provisional calculations took account of the following major differences :

— video colour standards (PAL and NTSC, etc.),

— remote control,

— recording speed,

— picture quality,

— sound recording (mono, stereo or hi-fi),

— number of video heads,

— accessories included in the price of the VCR (cables, computer, video tapes, etc.).

The basis for these adjustments was the price differences on the domestic market where available or cost of production including a margin for profit. Where these data were not available these adjustments had to be estimated on the basis of other facts available.

(36) With regard to differences in import charges and indirect taxes the Korean exporters claimed that to take account of these differences the refunded amount of duty and other import charges received

by the companies for exports of VCRs should be added to the export price of the product in question.

The duties and other import charges borne by VCRs sold on the Korean market differ from the amounts refunded for exported VCRs. This is due to the fact that VCRs sold on the domestic market have a higher content of Korean-produced parts than those exported.

This claim therefore had to be rejected since, according to Community legislation, such refunds can only be taken into consideration if these import charges are borne by the like product and by materials physically incorporated therein when destined for consumption in the country of origin.

During the on-the-spot verification the three exporters were asked to show the amount of duty and import charges included in domestic VCR prices but were unable to do so in a way that could be verified. For the purposes of a provisional determination the Commission therefore estimated these amounts.

(37) In addition, adjustments were made for differences in :

— transport, insurance, handling, loading and ancillary costs,

— packing,

— payment terms,

— warranty,

— salesmen's salaries and commissions.

(38) As regards payment terms, the three Korean exporters claimed that credit costs for financing value added tax and excise duty payments should be taken into consideration.

The Commission has doubts, however, as to the exact amounts involved and as to the direct relationship with the sales under consideration. Indeed, the amounts of taxes to be financed depend on the global balance of the tax obligation of each company. The claims have therefore been rejected at this stage of the proceeding.

(39) As regards salesmen's salaries four exporters had included costs for personnel not directly engaged in selling activities, e.g. drivers, secretarial staff, etc. The allowance was therefore estimated on the basis of the facts available.

(40) One exporter claimed that losses from sales of promotional goods to its dealers should be taken into consideration. This claim had to be rejected as these costs could not be directly linked to specific sales of VCRs to dealers and the losses resulting therefrom had therefore to be considered as general promotional costs.

(41) Four exporters claimed that in addition to adjustments already granted under the provisions of Article 2 (9) and (10) of Regulation (EEC) No 2423/88, in particular in relation to differences in conditions and terms of sale, allowance should be made for certain costs in the calculation of any normal value which was to be compared with export prices to OEMs, who sell the imported products in the Community under their own brand names. The exporters argued that such sales were not made at the same level of trade since they were generally made in large quantities fob Japan or Korea and incurred minimal selling costs as compared to the selling costs incurred by the sales companies on the Japanese and Korean markets. However, these exporters were unable to show to the satisfaction of the Commission that — had a large number of OEMs existed on the Japanese or Korean markets, as in the Community — by how much, if at all, 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 the 23rd recital).

G. DUMPING MARGINS

(42) Normal values for each of the models of four exporters were compared with export prices of comparable models on a transaction-by-transaction basis. The preliminary examination of the facts shows the existence of dumping in respect of imports of VCRs originating in Japan and South Korea from all the 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.

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

Daewoo	29,2 %,
Goldstar	26,4 %,
Samsung	25,2 %,
Funai	18,0 %.

(43) As Orion did not cooperate during the verification to the extent necessary neither normal value nor export prices could be established. In conformity with past practice it is considered appropriate with respect to this exporter to use the highest dumping margin found in the same country of export. In this connection the Commission considered that the results of its investigation concerning Funai provided an accurate and comparable basis for determination of the level of dumping to be applied to Orion because of their similar production and sales structure in Japan. Otherwise it would constitute a bonus for non-cooperation to assume that the dumping margin for Orion was any lower than that of the exporter which had cooperated in the investigation.

On the other hand it seemed to be unreasonable to apply the dumping margin of any Korean company to Orion because the structure of these companies and the other circumstances to be taken into account in the economy of Korea are too different from those of Japanese VCR producers.

H. COMMUNITY INDUSTRY

Development and present state

(44) When, during the late 1970s and early 1980s, the VCR became a product of mass consumption, European and Japanese producers competed for the establishment of different recording systems in the market. Philips and Grundig sold their own Video 2000 system, the majority of the Japanese producers and some European companies, the VHS system (developed by JVC), and some other Japanese producers, the Beta format developed by Sony. The VHS system turned out to be the most successful in the market and gained worldwide dominance. As a result the Video 2000 system was finally abandoned by Philips and Grundig in 1983/1984 and consequently all European producers had to manufacture the VHS format under licence to JVC or enter into a joint venture with a Japanese VCR producer already holding a VHS licence and having the know-how to produce VHS video recorders. In addition, before giving up Video 2000, Philips and Grundig had filed an anti-dumping complaint against Japanese VCR producers which led to the Japanese exercising voluntary restraint in their exports to the Community. As a result of this, many Japanese companies set up VCR production facilities within the Community.

(45) At present, therefore, several different categories of companies producing or assembling VCRs in the Community can be identified.

Firstly, the fully Community-owned producers such as Philips and Grundig (the former Standard Elektrik Lorenz/ITT was bought in 1988 by the Finnish Nokia group, now known as Nokia-Graetz); secondly, the joint ventures between European and Japanese companies such as J2T (50 % Thomson, 50 % JVC Japan — supplier for the Thomson Group; Telefunken, Saba, Nordmende, Ferguson and Thomson Grand Public and JVC Europe) and MB Video (65 % owned by Matsushita and 35 % by Bosch). These companies have been clearly identified as Community producers given the high level of local content in their products and their long-term commitment to investment and employment in the Community.

Thirdly, fully Japanese-owned companies with manufacturing facilities have been set up within the Community. The Commission leaves open the question of whether these companies should be regarded as part of the Community industry or whether they are merely carrying out simple assembly operations.

(46) Philips, Grundig, Nokia-Graetz and J2T actively support the complaint and represent more than 50 % by volume of VCRs produced or assembled in the Community.

MB Video and most of the wholly Japanese-owned companies in Europe who have replied to the Commission's questionnaire in the proceeding can also be regarded as supporting the complaint.

(47) The Commission regards those production or assembly facilities set up by the exporters involved in the proceeding as not being part of the Community industry because they are related to the exporters and fully controlled by them. The plants in question are, on the basis of the evidence at present available to the Commission, Goldstar Electronics Europe GmbH, Worms, Germany, Samsung UK and Orion in the United Kingdom. Funai also has production facilities in the United Kingdom as a joint venture with Amstrad, one of the biggest importers of VCRs from Funai Japan. This joint venture should therefore also be excluded from the definition of Community industry.

The Commission found that during the reference period only one of the complainant producers had imported VCRs from an exporter involved in the proceeding. Nevertheless, the volume of these imports and the fact that it seems to have been an isolated occurrence, does not justify the exclusion of this company on these grounds.

I. INJURY

(a) Volume and market shares of dumped imports

— The Korean industry

(48) The volume of exports was 75 000 units in 1985, 425 000 units in 1986 and 1 224 000 units in 1987, of which 623 000 units during the reference period.

When the Korean producers started exporting VCRs to the Community in 1985, they achieved a 1,2 % share in the Community market (10 Member States plus Spain and Portugal). In 1986 this reached 6,1 % and in 1987 it increased to 15,3 % of the total Community market. For the reference period their market share was 13,3 %.

— *Funai and Orion (Japan)*

(49) The combined exports of Funai and Orion amounted to 293 000 units in 1984, 466 000 units in 1985, 991 000 units in 1986 and 762 000 units during the reference period.

Funai started exporting VCRs to the Community in 1984 and Orion in 1982. Their joint market share developed from 5,1 % in 1984 to 7,6 % in 1985, to 13,9 % in 1986 and to 15,7 % during the reference period.

It should be noted that these two companies, as stated earlier, exported substantial quantities to the Community via third countries. This is why the precise quantity of exports destined for Community consumption and actually imported is difficult to establish. For this assessment the Commission evaluated data on destinations and technical specifications from the exporters concerned and from other sources.

Compared with 1985 the market share of all exporters concerned rose from 8,6 to 29 % for the reference period.

(b) **Prices**

(50) The Commission has investigated the pricing of the exporters as well as the Community producers at two levels of trade : end-user prices, by utilizing independent and representative market surveys ; the prices to the trade (i.e. distributors or dealers), by investigations on the basis of replies to questionnaires.

Price undercutting

(51) For the assessment of the margin of price undercutting the Commission compared the prices of the Community producer with those of the exporters involved in the proceeding in the two major Community markets, the United Kingdom and Germany, which together represent more than 60 % of the Community market and more than 70 % of the exports concerned.

The exporters sold to independent Community customers either directly or through their sales subsidiaries in the Community. In order to compare these selling prices with those of the Community producers, the Commission established the weighted average selling prices for the different sales channels, i.e. sales to OEMs, distributors or dealers. The average selling price of each exporter in each of these sales channels in each of the Member States was then compared to the corresponding figures for the Community producers.

(52) There is a great variety of models on the market and therefore there are no identical models to compare. The Commission, in order to make this comparison, selected representative Community models. The models which were regarded as representative were the Community models at the lower end of the price range because the great majority of the sales of the exporters took place in this range.

For the comparison the Commission chose models with the same basic functions and similar features and specifications. Therefore no adjustments had to be made for differences in features or specifications because possible minor differences in features or appearance were not considered substantial enough to make adjustments necessary.

For the purposes of comparing the prices of the exporters to those of the Community producers the average net selling prices for the different sales channels of the Community-produced models were taken. Where there were not sales by a Community producer in a particular sales channel appropriate adjustments were made.

For the preliminary determination, on the basis of this comparison price undercutting during the reference period of at least 20 % in the United Kingdom and 30 % in Germany were found. For some exporters these margins were considerably higher. The differences in price undercutting from the United Kingdom to Germany can be explained by the fact that prior to the reference period the United Kingdom VCR market had already suffered more from price depression than any other Community market and therefore the Community producer had been forced to lower his prices earlier on this market. These prices did not allow any profit and were already being made at a loss.

(c) **Impact of the dumped imports on the Community industry**

(i) *Effects on the market share of firms producing or assembling VCRs in the Community*

(53) Apparent consumption within the Community (12 Member States) increased from 5 800 000 units in 1984 to 6 200 000 units in 1985 to seven million units in 1987.

Apart from relatively stable imports of VCRs from Austria representing around 5 % of the Community market, all other imports into the Community came from Japanese exporters other than those involved in the proceeding. The market shares of these other Japanese exports decreased from 66 % in 1984 to 56 % in 1985, to 40 % in 1986 and to

only 24,6 % for the reference period. This development was a result of the Japanese efforts to build up their own production or assembly facilities within the Community rather than exporting directly. This is why the global development of production or assembly in the Community, in which this Japanese production or assembly in the Community is included, shows a clear increase from 24 % in 1984 to 29 % in 1985, to 34 % in 1986 and to 40 % in the reference period.

However, a comparison between the decrease in the other imports (minus 38,4 %) and the increase in production and assembly in the Community (+ 16 %) shows that within two years the dumped imports had taken over more than 20 % of the market share of all other suppliers, thus preventing Community production or assembly from taking advantage of the sharp fall in those other imports. Furthermore, the market share of the firms producing or assembling in the Community actually decreased on a per company basis.

(ii) *Effect on prices of Community producers*

(54) Since the VCR has become a product for private consumption the prices have been reduced constantly over the years as is the normal practice with most consumer electronics products. This is not only due to competition but also to the effects of economies of scale and improvements in design and rationalization. The market surveys available to the Commission as well as the trade prices of the producers show this constant price decrease up to the year 1985 at a rate of 5 to 10 % per year.

From 1985 onwards this general trend became a sharp decline at a rate of approximately 20 % per year. This depression of the average price for a VCR in the Community was continued in the reference period. For example the prices of a representative selection of leader models in the German market decreased from 100 % in the third quarter of 1986 to 79 % in the third quarter of 1987.

This sharp and accelerating general price depression for VCRs coincides with the appearance of the exporters concerned on the Community market. The European industry was forced to follow this decline in prices in order to maintain a foothold in the market.

(d) **Profitability**

(55) The development of the profit and loss accounts of some Community VCR producers showed heavy losses for the years 1983 and 1984 due, in large part, to the writing-off of investments in Video 2000.

On the whole, the profitability statements of Community producers or assemblers showed a decline in profits during the period 1985 to 1986 and most of them suffered severe losses on their sales of VCRs during the reference period. These losses were the result of a sharp decline in market prices for VCRs in 1985, 1986 and 1987, although the Community industry managed to cut its costs of production significantly during this period due to increased automation and efficiency.

(e) **Conclusions**

(56) In order to determine whether the Community industry is suffering material injury the Commission noted that while the absolute capacity, production and sales figures, taken in isolation, show a positive trend, they lagged significantly behind the general market development and increased at a much lower rate than imports from Korea and Funai and Orion and general consumption. This development is particularly apparent for the complainant industry. While the production figures in units for the complainant industry showed an increase, their market share taken individually decreased as well as the market shares of those Japanese companies who had set up production and assembly facilities in the Community. It has therefore to be provisionally concluded that the gain in market share by the exporters concerned took place at the expense of the Community VCR industry.

In addition, the pricing of the dumped exports had a highly depressive effect on the prices of VCRs in the Community. The price undercutting was substantial and persistent for the whole of the reference period. Although most of the VCRs exported were so-called low-end machines, the effect of the price undercutting in this area of the market where the majority of sales take place was an overall price decline because it affected — from the consumers' point of view — the justifiable price differences for additional features. As a result there was no possibility of the Community VCR producers making up the losses at the lower end of the market by higher margins on their sales of machines at the upper end of the range.

On the basis of this preliminary investigation, the Commission concluded that the Community VCR industry was currently experiencing material injury.

J. CAUSATION OF INJURY BY DUMPED IMPORTS

(a) Effect of dumped imports

(57) When assessing whether the material injury suffered by the Community industry has been caused through the effects of dumping, the Commission found that the price depression, the loss of market share and the loss of, or reduced, profitability by the Community industry coincide with the increase in the volume of the imports of the five companies concerned.

The sharp decline in prices started in 1985 with the appearance of the Korean manufacturers on the Community market and the influx of imports from Orion and Funai and continued in the investigation period. In a highly price-competitive market considerable price undercutting based on dumping by the exporters inevitably had an appreciable negative effect on prices, sales and, consequently, on the profitability of the competing Community manufacturers.

From 1985 onwards the profits of the complainants fell and turned into losses (for the majority) and reached an alarming level during the reference period.

(b) Effect of other factors

(58) The exporters argued that there had been general competition on the market and the prices were brought down by all producers selling in this market and not specifically by those named in the complaint. They have given examples of low price offers from producers not included in the proceeding or complainant producers.

By using available independent and representative market surveys for the French, German, Dutch and United Kingdom markets the Commission has carefully investigated whether companies other than the five involved in the proceeding could be identified as having practised constant price undercutting and whether, if so, such company could gain any advantage such as an increase in market share from it. Some local, short-term low-price selling activities concerning only certain models were not taken into account because it was generally accepted that because of temporarily high stocks or for the purposes of selling off discontinued models prices might be considerably below the usual level for particular models for a limited time only. These investigations resulted in the clear assessment that for the reference period and the whole year 1986 only the five companies under investigation had persistently undercut the prices of the other suppliers. All their models had been priced below comparable models of other producers. The low price offers by others, mentioned by the exporters, proved to have been isolated instances and a constant low-price policy by those companies could not be shown. On the contrary, at the present stage of the investigation the five firms under investigation clearly appear to have led the downward trend in prices.

These results were supported by the fact that none of the other producers offering VCRs on the Community market gained any significant market share during the reference period or the 12 previous months. On the other hand the five companies found to be dumping not only increased their sales volumes but also gained materially higher market shares.

(59) It has been further argued that the complainants losses were due to mismanagement and the delayed effects of abandoning Video 2000. The late change from Video 2000 to VHS by Philips and Grundig certainly caused heavy losses, but these had already occurred before the exporters materially entered the market.

In 1985 and 1986 the Community industry was on the brink of recovery, particularly in the light of growing demand, when the Korean industry started exports to the Community and Funai and Orion increased their exports dramatically.

The high losses of most of the Community producers were not due to old-fashioned production processes. The Commission found that the manufacturing standards of those Community producers visited were in general clearly not lagging behind those of the exporters concerned and that their high standard of automation considerably reduced the possible advantages of the exporters under investigation as far as the costs of labour were concerned.

The Commission therefore provisionally concludes that the injury suffered by the Community industry is not caused by other factors.

(c) Conclusion

(60) In conclusion, the volume of the dumped imports, their market penetration, the prices at which dumped goods have been offered in the Community, and the losses and loss of profit suffered by the firms producing or assembling in the Community led the Commission to determine that the effects of the dumped imports of VCRs, taken in isolation, have to be considered as causing material injury to the Community industry.

(61) In addition, with regard to the Korean producers the investigation showed that there is a threat of a further substantial increase in their exports due to their existing production capacity, which amounts

to approximately eight million units per year. There are only two large markets in the world on which this capacity can be sold, the United States and the Community. The US market is highly competitive, does not allow profits to be made, and seems to be saturated and even subject to some kind of self-limitation, so that it is very likely that the Korean industry would try to further increase its exports to the Community. Estimates for 1988 suggest that imports into the Community from Korea will reach approximately two million units, which would represent a market share of 25 %.

It would therefore seem likely that these exporters will increase their exports of VCRs to the Community and thus cause even more severe injury than has so far been found.

K. COMMUNITY INTEREST

(a) General considerations

(62) In assessing whether it is in the interest of the Community to take measures against the dumped VCR imports from Japan and Korea which have been shown to cause material injury to the complainant Community industry, the Commission considered in the first place that because of the tremendous losses suffered by the Community producers the continued existence of this industry is at stake. This could also influence the Community's production of colour televisions and other consumer electronics products.

(63) The technologies for VCRs and televisions are closely related. The loss of technological know-how and of advances in the VCR area will mean the loss of a competitive edge in television technology as well.

VCR production also involves technology which is transferable, with some modifications, to other consumer electronics products. VCR production requires high-precision mechanics (micro-motors, heads, etc.) and highly developed electronic circuitry. The loss of VCR production capability would represent the loss of substantial technical know-how in various important industrial fields and, in addition, it would seriously weaken Community consumer electronics manufacturing capability in general, both at present and in the future.

(64) With regard to employment, the abandoning of VCR production by the complainant industry could lead to the loss of several thousand jobs.

(65) Exporters, importers, associations of dealers and end-users have argued that the imposition of duties would cause price increases, reduce competition and reduce consumer demand.

As to the argument of possible price increases it should be borne in mind that one of the aims of imposing an anti-dumping duty is precisely that of increasing the prices of the imported goods in question. Indeed, there can be no guarantee that the consumer will continue to benefit from price advantages resulting from unfair competition.

In the Commission's view a possible limited disadvantage to consumers with respect to the higher prices of VCRs caused by the imposition of anti-dumping duties will be outweighed by the benefits of safeguarding employment and maintaining a foothold in this important technological sector. The Commission does not, however, expect general demand for VCRs to decrease because this amounts to speculation. Demand within the Community has been steadily increasing in recent years. The Community market is not at all saturated.

Furthermore, the Commission does not expect competition amongst companies selling VCRs to be reduced by the imposition of anti-dumping duties. The exporters concerned will still be in a position to compete in the market and apart from them there are still a great number of other VCR producers from different countries offering VCRs within the Community. The only difference will be that the five exporters in this proceeding will no longer be able to benefit from their dumping.

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

L. DUTY

(67) In order to eliminate the injury suffered by the complainant Community producers, their selling prices have to be substantially increased. This should enable the Community producers to cover their costs of production and to provide them with an adequate profit. Consequently, the level of the duty should be such as to eliminate the price undercutting of the exporters and to allow the Community manufacturers to increase their prices and sales in order to achieve an adequate return on sales.

(68) As far as the elimination of price undercutting is concerned, the Commission considers that the duty should, if possible, cover the price undercutting

margin provisionally established, i.e. at least 25 % (as an average of the different margins in different countries).

(69) As far as the return on the sales of VCRs in the Community is concerned, the Community industry claimed that a return of between 12 and 15 % was required to operate competitively and commercially, taking account of research and development, factory automation, advertising requirements and the costs of the appropriate financing in the Community.

The Commission took the view that to enable the Community industry to invest in factory automation, research and development and the design of new products a reasonable margin of profit was necessary. Taking into account the fact that investment and research and development in the field of high technology will need high expenditure as well as the fact that a VCR is a mass-produced product and as such does not require unusually high profit rates, a return on sales of 10 % can, for the purposes of the preliminary determination, be regarded as an appropriate minimum

(70) When calculating the minimum amount of duty, and having regard to the average price undercutting and the adequate profit margins, the Commission had, however, to consider that even under the present circumstances the Community industry as a whole is not profitable. Most Community producers or assemblers have been suffering severe losses and only a minority are able to make a very small profit or reach break-even point. For the purposes of preliminary determination the Commission has disregarded the amount of these losses. Consequently, in order to level out the effects of the injury caused by the exporters in the proceeding, the Commission has considered it necessary to increase the price to the extent of the price undercutting and the necesary profit margin. This calculation gives a required price increase of 35 %.

(71) In order to establish the rate of duty to be imposed provisionally, the Commission had to express the price increase factor referred to in the 70th recital as a percenage of the cif value of the imports of VCRs from Korea and from Funai. To do this the average selling price of all sales of the exporters at the different levels of trade were related to the cif value of the goods when imported. It was found that the cif value expressed as a percentage of the selling price to the first independent buyer within the Community should on average be 75 %.

(72) The percentage referred to in the 70th recital was then expressed as a percentage of the cif value found. The result of this calculation is 46,7 % which is the price increase at the Community frontier necessary to remove the injury.

Because no dumping margin of 46,7 % or higher was found for any exporter involved in the proceeding it was considered necessary to impose provisional anti-dumping duties at the level of the dumping margins found.

The dumping margin found for Funai should be applied to Orion and a duty imposed at this level. Because the proceeding has not been opened against Japan as the country of origin but only against two Japanese firms, a residual duty on exports by other Japanese VCR producers or exporters is not possible.

(73) The provisional duty to be imposed should apply to all VCRs from Korea and those produced or exported by Orion and Funai, with the exception of video cassette players.

(74) A period should be fixed within which the parties concerned may make their views known and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION :

Article 1

A provisional ani-dumping duty of 29,2 % of the net free-at-Community-frontier price before duty is hereby imposed on imports of video cassette recorders falling within CN code ex 8521 10 39 originating in the Republic of Korea.

The rate of duty for video cassette recorders produced or exported by the following companies shall be :

— Daewoo	29,2 %,
— Goldstar	26,4 %,
— Samsung	25,2 %

of the net free-at-Community-frontier price before duty.

The rate of duty for video cassette recorders originating in Japan and produced or exported by the companies Funai or Orion shall be 18,0 % of the net free-at-Community-frontier price before duty.

2. The duty specified in this Article shall not apply to video cassette players.

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

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to

the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make known their views and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities.*

Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 26 August 1988.

For the Commission

Frans ANDRIESSEN

Vice-President