COMMISSION REGULATION (EEC) No 4062/88

of 23 December 1988

imposing a provisional anti-dumping duty on imports of video cassettes and video tape reels originating in the Republic of Korea and Hong Kong

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 under the above Regulation,

Whereas :

A. PROCEDURE

(1) In September 1987 the Commission received a written complaint lodged by the European Council of Chemical Manufacturers' Federation (Cefic) on behalf of producers whose collective output was stated to constitute a major proportion of Community production of the products in question. The complaint contained evidence of dumping of the products concerned originating in the Republic of Korea (Korea) and Hong Kong and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

The Commission accordingly announced, by notice published in the *Official Journal of the European Communities* [2] the initiation of an anti-dumping proceeding concerning imports into the Community of video cassette tapes either supplied in cassettes or on ready-split 'coated' reels for assembling or as large unsplit coated reels, falling within CN codes 8523 11 00, 8523 12 00 and 8523 13 00 and originating in Korea and Hong Kong and commenced an investigation.

(2) The Commission officially 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 their views known in writing and to request a hearing.

(3) All of the known Korean exporters, some Hong Kong exporters, some importers and all complainant Community producers made their views known in writing. Submissions were also made by a number of importers.

(4) 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) *Community producers :*

- Agfa-Gevaert AG, München, Germany
- BASF Aktiengesellschaft, Ludwigshafen, Germany
- Magna Tonträger Produktions GmbH, Berlin, Germany
- PDM Magnetics, Oosterhout, Netherlands.

These Community producers are all Members of Cefic.

(b) *Korean producers :*

- Goldstar Co., Seoul
- Kolon Industries Inc., Seoul
- Saehan Media Co., Seoul
- SKC Ltd, Seoul ;

(c) *Hong Kong producers :*

- ACME Cassette Manufacturing Ltd
- Hanny Magnetics Ltd
- Magnetic Enterprise Ltd
- Magnetic Technology Ltd
- Swilynn (HK) Ltd
- Swire Magnetics (HK) Ltd
- Wing Shing Cassette Ltd
- Yee Keung Industrial Company Ltd ;

(d) *Importers in the Community :*

- Goldstar Deutschland GmbH, Ratingen
- Lucky Goldstar International Ltd, London
- SKC Europe GmbH, Frankfurt
- Sunkyong France sàrl, Suresnes
- Sunkyong Europe Ltd, London.

(5) The Commission requested and received detailed written and oral submissions from the complainant Community producers, most exporters and the importers mentioned above, and verified the information therein to the extent considered necessary. The Commission also took into account submissions from video cassette assemblers and distributors in the Community. Some Hong Kong producers either refused access to information deemed to be necessary by the Commission for its verification of their records or did not provide during this investigation reliable and/or verifiable

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 340, 18. 12. 1987, p. 6.

information concerning their cost of production of the like products and their margin of profit on their sales on the domestic market. The Commission has, therefore, made its findings on the basis of the facts available.

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

B. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT AND COMMUNITY INDUSTRY

1. Product under consideration

(7) The product concerned by the notice of initiation of an anti-dumping proceeding is referred to as video cassette tape.

The investigation showed however that video cassette tape is actually supplied in two different forms to the Community.

(8) The first form is ready-split reels of polyester tapes coated with chromium dioxyde, so-called 'pancakes'; these video tape reels are used in the manufacturing process of video cassettes. The split reel of polyester tape is threaded in a certain length into a plastic cartridge, the so-called V-O shells; this loaded shell is the video cassette. Video tape reels are normally sold to winding companies or assemblers as a basic product for the manufacture of video cassettes.

(9) The second form is video cassettes: they are in general manufactured under a licence of JVC — Japan Victor Company. The video cassettes are used in video cameras in order to take video films, or in video cassette recorders to record television programmes and to play them back as well as pre-recorded movies or films taken with a video camera; video cassettes are also used in video cassette players to play pre-recorded movies. There are different models of video cassettes with various tape lengths and quality differences. However, general acknowledged quality standards for these different models do not exist.

The manufacturers normally sell the video cassettes either to OEM-customers (OEM = original equipment manufacturers), distributors and dealers or to duplicators who record movies on them and sell these pre-recorded cassettes to end-users.

(10) The investigation showed that the video tapes on reels or in cassettes concerned fall within CN code ex 8523 13 00.

2. Like product

(11) As far as the definition of the like products is concerned, the Commission found that the Community-produced video tape reels are alike in all respects to the video tape reels exported from Korea.

(12) With regard to video cassettes, the investigation showed, on the one hand, that the various types of video cassettes sold on the Korean and Hong Kong market differ mainly from those sold in the Community market in the length of the tape. This difference is, however, of minor importance. On the other hand, the video cassettes exported from Korea and Hong Kong to the Community are, apart from possible quality differences, alike in all respects to the Community-produced video cassettes.

(13) Goldstar submitted that video cassettes sold to duplicators are not like products to those sold to distributors and/or end-users. users. This argument had to be rejected since neither the physical and technical characteristics nor the application and use are significantly different.

(14) In conclusion, the Commission considered that all Community-produced video cassettes and video tape reels are like products to all video cassettes and video tape reels exported from Korea and Hong Kong.

3. Community industry

(15) The Commission found that during the period under consideration, the four Community producers on behalf of which the complaint was lodged, manufactured about 90 % of the total Community output of the like products, hence a major proportion of the total Community production.

(16) Accordingly, the Commission considered that they form the Community industry, within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

C. DUMPING

(17) Normal values, export prices, comparisons and dumping margins were established separately for video cassettes and video tape reels.

1. **Normal value**

(a) *Normal value based on prices in the exporting country*

(18) For each of the producers' video cassette models and video tape reels sold in sufficient quantities and at prices which permitted recovery of all costs reasonably allocated in the normal course of trade on the domestic market, normal value was provisionally determined on the basis of the weighted average domestic prices of these models and reels. In cases where the volume of such sales was less than the threshold, established by the Commission in previous cases as 5 % of the volume of exports of these models to the Community, the Commission considered such sales to be insufficient to be representative and determined normal value on the basis of constructed value.

(19) One Korean producer submitted, after the investigation in its premises, information concerning its import charges borne by the like product and by materials physically incorporated therein, when destined for consumption in the country of origin and refunded in respect of the products exported to the Community.

(20) Since these import charges could not be verified and were disproportionately higher than those claimed by other producers in the same country, it was considered appropriate to reduce the normal value based on the comparable price actually paid on the Korean market only by the average amount claimed by the other producers.

(b) *Normal value based on constructed value*

(21) In all such cases where there were either no sales or insufficient sales on the domestic market of a model of video cassette suitable for direct comparison to that sold for export to the Community, or where models suitable for direct comparison to those sold for export to the Community were sold in substantial quantities over the reference period on the domestic market at prices which did not permit recovery, in the normal course of trade and during the reference period, of all cost reasonably allocated, the normal value was determined on the basis of constructed value of the model concerned. For the same reasons, the normal value of video tape reels was determined for one Korean producer on the basis of constructed value. The constructed value was established on the basis of the costs, both fixed and variable, in the country of origin of materials and manufacture for the model exported to the Community plus a reasonable amount for selling, administrative, other general expenses and profit.

(22) Two of the Korean producers claimed that they sold the products in question on the domestic market in substantial quantities during the reference period at prices which on average permitted recovery of all their costs.

(23) These claims, however, could not be accepted, since the costs as presented by these producers did not fully reflect their real costs of production.

(24) As far as manufacturing overhead costs were concerned, it appeared that depreciation costs, for the considerable investment in new or increased existing production capacity, had to be adjusted. It was considered that an allocation should, in general, be made on the basis of the average manufacturing costs of the products concerned. This allocation for depreciation on the basis of manufacturing costs was considered the most appropriate and objective method in order to arrive at the exact costs for each model sold on the domestic market. Exceptionally, where average manufacturing costs were not available, an allocation was provisionally made on the basis of the number of video cassettes produced.

(25) In this context, one producer which built up its production capacity for video cassettes and video tape reels and who commenced production in October 1986 had already depreciated 10,2 % of its investment costs in 1986 over three months (October to December). This is equivalent to a figure for 12 months of 40,8 %. For the whole of 1987 the depreciation rate was only 23,3 %. While it might be legitimate, for tax or other reasons, to depreciate in the first year of production a higher amount, this depreciation method does not reflect the real depreciation costs of a company. The Commission therefore opted for a more regular depreciation method in order to avoid the depreciation during the reference period being artificially low.

(26) Another Korean producer had allocated depreciation costs for building, structure, equipment and vehicles between video cassettes and tape reels according to the ratio of assembling investment against total machinery investment involved in the production of these two products. The Commission considered, however, that this is not an accurate reflection of the true depreciation costs and, in the absence of precise information, allocated the relevant depreciation equally between these two products.

(27) As far as financing costs are concerned, one Korean producer did not fully allocate the considerable financing costs for new investments in the video cassette and video tape reel sector on the product's specific turnover. The Commission therefore considered it necessary to re-allocate the financing costs in order to reflect correctly the costs for the investments in this sector. In this case, the allocation was based on the financing costs according to the reported domestic interest rates of this exporter, on his investment costs in the video cassette tape sector and on his degree of self-financing, all based on this producer's reported accounting data. The amount of financing costs allocated per unit was in line with those reported by the other Korean producers. Another Korean producer alleged financing costs which included costs for export sales. This claim could not be accepted since the costs of production have to be computed on the basis of all costs, in the ordinary course of trade, in the country of origin. Therefore, the financing costs for export sales could not be taken into account. The Commission computed the financing costs on the basis of the ratio of total domestic financing costs against the total domestic turnover.

(28) As regards the amounts of selling, administrative, other general expenses and profit, they were calculated with reference to the expenses incurred and the profits realized by the producer concerned, on its sales in the domestic market of comparable models when the Commission was satisfied that they reflected the actual expenses and profits for the models sold on the domestic market. In all other cases, such expenses have been calculated by reference to the expenses incurred and the profit realized by other producers on their profitable sales of the like product in the Korean and Hong Kong markets respectively.

(29) One producer requested that a reduced profit rate should be used for its sales to OEM-customers. No specific reasons for this request were however given. Indeed, the Commission found that the products as such are identical, only the paper wrapping of these cassettes differs according to the trade name of the OEM-buyer.

In addition, the sales quantities to OEM-buyers are, in general, not substantially different to those to video cassette distributors, and the methods of selling through the two sales channels (OEM-buyers and distributors) are similar. Finally, there were no indications that selling costs and profits involved were substantially different for these two sales channels. Therefore, this request was not accepted.

(30) On any occasion that an allocation of sales, administrative and other general expenses was not made on the basis of turnover, the amount to be allocated was calculated on the basis of the producer's accounting practice where the Commission was satisfied that the method used was reasonable for the particular costs concerned.

2. Export price

(31) With regard to exports by Korean and Hong Kong producers directly to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the products sold.

(32) In other cases, exports were made to subsidiary companies which imported the product into the Community. In such cases, it was considered appropriate, in view of the relationship between exporter and importer, that export prices be constructed on the basis of prices at which the imported product was first resold to an independent buyer. Discounts, rebates and the value of free goods given in connection with a sale were deducted from the price to the independent customer. Suitable adjustment was made to take account of all costs incurred between importation and resale, including all duties and taxes.

(33) Where cost allocations were necessary in constructing export prices these were made on the basis of turnover. The costs and turnover used for this purpose were generally those of the related importers' last available financial year and accordingly based on audited accounts. On any occasion that an allocation of sales, administrative and other general expenses was not made on the basis of turnover, the amount to be allocated was calculated on the basis of the exporters' available cost accounting data directly related to the sales in question. One importer related to a Korean producer claimed general and administrative expenses based on a turnover that included the financing transactions within the group. The Commission considered that this claim did not reflect the normal costs of that importer for the products under consideration and disregarded the part of the claim linked to the financing transactions. For another importer, the Commission also made an allowance for advertising costs paid by the Korean producer, as per Article 2 (8) (b) of Regulation (EEC) No 2423/88.

(34) These allocated costs included all administrative and other general costs relating to the sales under consideration whether financed by the exporter or by the related importer.

(35) To arrive at a constructed cif Community frontier export price, adjustments were also made for Community import duties and for a 10 % profit on sales turnover. The Commission based this 10 % profit margin on data asked for and received from independent importers of video cassettes. Indeed, it appeared that before the imports of video cassettes from Korea and Hong Kong, i.e. in 1985, the average return on sales of independent traders was over 10 %. For the purposes of these provisional proceedings, this percentage was accordingly applied to all sales of the related importers to their first independent purchasers in the Community.

(36) As far as the export prices were concerned, the Commission verified, for the products of each exporter at least 70 % of all transactions during the investigation period. This quantity was considered representative of all transactions of these subsidiaries during this period.

D. COMPARISON

(37) For the purpose of a fair comparison between normal value and export price and in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88, the Commission took account of differences affecting price comparability, such as differences in physical characteristics 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. The constructed values were determined ex domestic sales organization, export prices were established ex export sales company or sales organization.

E. DUMPING MARGINS

(38) Normal value established on a weighted average basis for each of the models and of ready-split coated video reels of each producer was compared respectively with the export price of comparable models and the video tape reels on a transaction-by-transaction basis. The preliminary examination of the facts shows the existence of dumping in respect of imports of video tape reels and video cassettes originating in Korea and of video cassettes originating in Hong Kong from all Korean and Hong Kong producers 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.

(39) The margin of dumping varied according to the producer, and the weighted average margins were as follows :

— **Video cassettes**

Korean producers

— Goldstar Co.	10,82 %
— Kolon Industries Inc.	7,64 %
— Saehan Media Co.	4,56 %
— SKC Ltd	6,68 % ;

Hong Kong producers

— Hanny Magnetics Ltd	59,35 %
— Magnetic Enterprise Ltd	20,55 %
— Swilynn Ltd	8,13 %
— Swire Magnetics Ltd	11,37 % ;

— **Video tape reels**

— Saehan Media Co.	1,06 %
— SKC Ltd	5,53 %.

(40) For those producers that neither replied to the Commission's questionnaire, nor otherwise made themselves known, dumping was determined on the basis of the facts available in accordance with the provision of Article 7 (7) b of Regulation (EEC) No 2423/88. In this connection, the Commission considered that the result of its investigation provided the most appropriate basis for determination of the margin of dumping. Since it could create an opportunity for circumvention of the duty, if the dumping margin for those producers was any lower than the highest dumping margin of 10,82 % for video cassettes and 5,53 % for video tapes reels determined with regard to the Korean and 59,35 % determined with regard to the Hong Kong producers who had cooperated in the investigation, it is considered appropriate to use these dumping margins for these groups of producers.

(41) In addition, one Hong Kong producer refused access, during an investigation in their premises, to information deemed to be necessary by the Commission for its verification of the records of the company concerned. Three other companies could not provide any verifiable accounting data concerning their cost of production, selling general and administrative expenses and profit. As a result, the Commission could not be certain of receiving full and reliable data for establishing the normal value for the producers concerned and, accordingly, considered it appropriate that preliminary findings for these companies also be made on the basis of the facts available, i.e. the results of the investigation.

(42) It was considered that, in these circumstances, it would also create an opportunity for circumvention of the duty and would constitute a reward for non-cooperation to hold that the dumping margin of these producers was any lower than the highest

dumping margins determined with regard to a producer who had cooperated in the investigation. For these reasons and in accordance with the provisions of Article 7 (7) b of Regulation (EEC) No 2423/88 it is considered appropriate to use the highest dumping margin for these companies.

F. INJURY

1. Volume and market shares

(43) As regards market volume, the consumption of video cassettes in the Community showed a steady increase from 123,5 million units in 1985, 167,7 million units in 1986, to 230,2 million units in 1987, that is an 86,4 % rise.

(44) As regards imports from Korea and Hong Kong and market shares, these developed for video cassettes as follows:

— 1985 10,8 million units (i.e. 5,5 and 5,3 respectively)
— 1986 33,1 million units (i.e. 16,5 and 16,6 respectively)
— 1987 (1) 64,2 million units (i.e. 35,8 and 28,4 respectively).

During the same period the sales of the Community industry developed as follows:

— 1985 51,3 million units
— 1986 59,5 milion units
— 1987 (1) 82,8 million units.

This development represents a rise in the market shares held by Korea and Hong Kong from 8,7 % in 1985 to 27,9 % in 1987, while the market shares of the European producers remained nearly constant (1985: 33 %; 1987: 36 %). Therefore, it appears that from 1985 to 1987, while the market volume of video cassettes almost doubled, the market shares of Korea and Hong Kong producers tripled, when those of the European producers remained constant.

(45) As far as video tape reels are concerned, Korean producers sold in 1985 2,1 million square metres of video tape reels in the Community, while the Community producers sold 21 million. In 1987, the former sold 7 million square metres of video tape reels, while the latter sold 110,6 million square metres.

2. Prices

(46) As far as prices are concerned, those of the Community industry showed on average a steady downward trend between 1984 and 1987: during this period the average price of the most sold video cassette, the VHS E180 decreased by 50 %, while the price decrease for video tape reels in 1987 alone was about 50 %.

(47) As regards price undercutting for video cassettes and video tape reels, the Commission compared the weighted average selling prices free of all rebates and taxes, calculated on the basis of sales to the first unrelated customer in the different sales channels (OEM, assembler, distributor, retailer and end-user) during the reference period. The average selling price of the Community producers was weighted in relation to the sales volume of each different type of the like products. This European average selling price was then compared to the corresponding figures for each Korean and Hong Kong producer on the basis of cif prices, and also weighted in respect of sales volume.

(48) Since Korea and Hong Kong prices had to be established on the basis of the cif Community frontier prices, while the European producers prices were normally free to customers' premises, an adjustment of 10 % was granted. In addition, the Commission took account, on the one hand, of the fact that Korean and Hong Kong products are regarded as being of a lower quality than the Community-produced video cassettes and video tape reels, and, on the other hand, that the majority of consumers does not differentiate between the different sources of supply. Therefore, an additional quality adjustment of 20 % was granted.

(49) By this comparison, the Commission found that, as regards video cassettes, price undercutting of between 4 % and 20 % took place for the Korean producers, and between 0 % and 32 % for the Hong Kong producers. As regards video tape reels, the investigation showed a price undercutting of between 24 % to 30 % for the Korean producers involved.

3. Other relevant economic factors

(a) *Capacity, utilization rate, production and stocks*

(50) In this respect, the Commission found that the actual capacity rose from 58,84 million units in 1985, to 76,45 million units in 1986 and to 100 million units in 1987, with an average utilization rate decreasing from 84,3 % in 1985, 81,1 % in 1986, to 76,1 % in 1987. Total production increased from 49,6 million units in 1985, to 62,0 in 1986 and to 76,1 million units in 1987 (January to November). In the same period, Community producers' stocks of video cassettes increased more rapidly than sales: while the sales quantity increased by about 46 % between 1985 and 1987, the stocks increased from 9 million units to 23,6 million units, that is by 162 %, and represented during the reference period almost 25 % of the Community production. As far as video tape reels are concerned, the production increased from 21 million square metres in 1985 to 110,6 million square metres in 1987.

(1) January to November.

(b) *Value of sales, profitability and employment*

(51) As regards video cassettes sales of the Community industry, their value remained nearly constant between 1985 and 1986 (+ 0,9 %) while the quantity sold increased by 25 %. During the reference period the value of the sales decreased (− 14,5 %) while the quantities sold kept increasing (+ 22,7 %).

(52) As regards video tape reels, the value of sales increased from 1985 to 1986 (+ 47 %) and from 1986 to 1987 (+ 40 %). However, the increase of the quantities sold was 183 % in 1986 and 86 % in 1987.

(53) As regards profits of the Community producers of video tape reels and video cassettes, it showed a consistent downward trend from 1985. In 1985, three of the four Community producers were profitable. The loss realized by the fourth producer was mainly due to considerable investment costs which would be offset by profit in the following years. In 1986, only one Community producer was still profitable. In 1987, all four Community producers suffered losses of 9 %, 10 %, 22 % and 27 % resepctively on their sales of video cassettes in the Community. Similar losses were realized on the sales of video tape reels.

(54) Employment increased from 3 782 persons in 1985 to 3 958 in 1986 but decreased slightly in 1987.

4. Conclusion

(55) In order to determine whether the Community industry is suffering material injury in the sense of Article 4 (1) of Regulation (EEC) No 2423/88, the Commission noted that the market share capacity, production and sales figures, taken in isolation, show a positive trend. However, compared with the imports from Korea and Hong Kong and with the general consumption, they lagged significantly behind the general market development. Indeed, while general consumption increased by about 86 % between 1985 and 1987, the Community industry increased its capacity, production and sales at much lower rates, i.e. 70 %, 53 % and 46 % resepctively. Furthermore, the production increase was partly outweighed by the rise of stocks (+ 162 %).

(56) As far as market shares are concerned, Community producers did not benefit from the economies of scale achieved and could only maintain their position between 1985 and 1987, while Korea and Hong Kong producers increased their share by 220 %.

(57) Profits were decreasing steadily, despite strong efforts to reduce costs of production and despite the increase of production and sales, owing to the constant depression of prices: in 1986 and 1987, the Community industry as a whole invested more than 15 % of its value of sales in rationalization and achieved a reduction of more than 15 % of its costs of production; during the same period, the decrease of prices outweighed these efforts of rationalization, despite the increase of sales, and led to a decline in turnover of 15,4 % during the reference period. This loss of profitability endangers not only the continuation of the video cassette and video tape reel production of all four Community producers but also the further production of other magnetic tapes, for example for audio equipment or for application in the electronic data processing industry. It further puts at risk employment and jeopardizes the further development of the Community industry in other sectors.

G. CAUSATION OF INJURY

1. Cumulation

(58) As regards causation, the Commission considered that the effects of Korean and Hong Kong imports had to be analysed accumulatively. Indeed, Korean and Hong Kong video cassettes and video tape reels which are subject to investigation were marketed with a similar sales strategy in the Community within a comparable period and competed together with video cassettes and video tape reels produced in the Community and imported from other countries. This competition led Korean and Hong Kong producers to adopt a similar behaviour on the Community market.

2. Effects of dumped imports

(59) The Commission found that the aggravation of the downward trend of prices, the impossibility for the Community producers to increase their market shares, and the loss of — or reduced — profitability by the Community industry coincides with the beginning of the imports from Korea and Hong Kong, and has worsened since the level of these imports increased. Also, other indications of the health of an industry, such as capacity of production, turnover and stock figures, were significantly better for the Community industry in 1985 than during the reference period. Indeed, in a highly price-competitive market, the considerable price undercutting on video cassettes has an appreciable

negative effect on sales and accordingly on the profitability of the Community industry. This negative effect is strengthened by the substantial price undercutting of these importers on video tape reels, which are used by Community assemblers to produce video cassettes intended to be sold in competition with video cassettes manufactured by the Community industry.

3. Effects of other factors

(60) As to the possibility that injury to the Community industry has been due to other factors, the Commission examined some issues raised by Korean and Hong Kong producers.

(61) Firstly, it was contended that the prices had been declining since 1980, principally due to the general reduction of the costs of production and price competition from the Community assemblers. Secondly, it was said that the Community industry had maintained artificially high prices, and had abnormally high operating costs owing to its specific cost structure and especially its advertising expenses.

(62) As far as prices are concerned, the Commission found that the price decline resulting from the reduction of costs of production and from fair competition, had considerably amplified since 1985, by the consistent price undercutting of Korea and Hong Kong producers. It had further been reinforced by the competition of European assemblers benefiting from a similar price undercutting of Korean video tape reels. As far as the operating costs of the Community industry are concerned, the Community industry had substantially cut its production costs. Further, the Korean and Hong Kong producers did not submit any relevant evidence of the alleged abnormal cost structure of the European producers.

(63) In conclusion, the volume of the dumped imports, their market penetration, the prices at which they have been sold in the Community, led the Commission to determine that the injury suffered by the Community industry and caused by the dumped imports of video cassettes and video tape reels originating in Korea and Hong Kong has to be qualified as material.

H. COMMUNITY INTEREST

1. General consideration

(64) In assessing whether it is in the interest of the Community to take measures against the dumped imports of video cassettes and video tape reels from Korea and Hong Kong, the Commission considered in the first place that video cassettes and video tape reels form an important part of the video industry, because video cassettes are the only device able to be used in a video camera or a video cassette recorder to record or to play a programme. Secondly, the video tape industry plays an important role in the electronic media and entertainment sector, which is developing rapidly. Finally, video cassette production belongs to the high technology chemical sector where new technological developments can be expected.

(65) Therefore, substantial cuts in the production of video cassettes by the Community industry would also have negative effects on the chemical, electronic media and entertainment industry in the Community. Moreover, video cassette technology has to be developed, at least to a certain degree, with technological progress in video cassette recorder, camera, and television industry : an ailing or vulnerable video cassette manufacturer will not be in a position to take up the technological challenge. Eventually, the Community industry would suffer in terms of employment and commercial strength for lagging behind such technological and commercial development.

2. Argument of producers

(66) As far as video tape reels are concerned, it was argued that the imposition of an anti-dumping duty would lead to unemployment for Community assemblers.

(67) As regards video cassettes, it was argued that the imposition of an anti-dumping duty would cause the Community duplicators and the distribution sector a loss of profit and consequently some loss of employment.

(68) With regard to these arguments the Commission notes that the interests of the assemblers, duplicators, distributors, as well as the consumers have to be weighed against the multiple consequences of not offering protection by the re-establishment of fair competition conditions to a viable Community manufacturing industry in the video tape sector. On balance it considers that the Community interests are to ensure the continued existence of the video tape manufacturing industry with the consequent benefits on employment and technological expertise rather than favouring Community assemblers, duplicators and distributors which have been, to a certain extent, dependent on the injurious dumped imports.

(69) As far as prices are concerned, the Commisson is aware that prices of these exports from Korea and Hong Kong might increase, and that end-users and duplicators, OEM companies and assemblers might therefore have to pay more for their supplies. It should, however, be kept in mind that the price advantage which these buyers previously enjoyed originated from unfair business practices, and that there is no justification for allowing these unfair low prices to persist. Moreover, price increases for video cassettes will probably only have a minor effect on consumers since video cassettes have to be used together with high-value video cameras and video cassette recorders or players; it will be the same for duplicators, since the cost of a video cassette is minor compared with the cost of the copyright for a movle. Finally, as far as the assemblers of video cassettes are concerned, it has to be kept in mind that the Community industry has to increase its prices if it wants to re-establish profitability. Anti-dumping duties will therefore have only minor effect on their competitive situation.

3. Conclusion

(70) In considering all the foregoing aspects, the Commission found that the Community interests call for granting protection to the Community industry to be reasonable. The Commission has taken account of the rapidly worsening conditions of the Community industry in recent years and particularly during the reference period. The Commission therefore considers it necessary to take steps to prevent further injury being caused, by imposing provisional anti-dumping measures on the import of video cassettes and video tape reels from Korea and Hong Kong.

I. DUTY

(71) In order to eliminate the injury suffered by the Community industry their selling prices have to be substantially increased. Such increase should enable the Community industry to cover its costs of production and provide it with an adequate profit.

Consequently, the Commission calculated a target price for the best selling model of video cassette, the VHS E180, which represents about 75 % of all sales of the Community industry: this target price was calculated on the basis of the actual weighted average cost of production for this model of each Community producer plus a target profit margin of 12 %. When determining this margin, the Commission considered, on the one hand, the substantial investments in the past, and, on the other hand, the necessity for the Community industry to finance progress in video tape technology. In this respect, the Commission took account of the average current expenditure of the Community producers for investments in research and development.

(72) In order to establish the rate of duty, the Commission then calculated the weighted average Korean and Hong Kong resale price of the same model and compared this price with the abovementioned target price on a company by company basis. The difference between those two prices was expressed as a percentage of the average cif value of the Korean and Hong Kong imported VHS E180. For this purpose, the price undercutting found (see recitals 47 to 49) was taken into account.

(73) The result of this calculation was an injury margin for each producer, which represents the price increase necessary to remove the injury suffered by the Community industry. However, no producer has a dumping margin as high as this individual injury threshold. Accordingly, and in order that the injurious effect of the dumped imports be eliminated, as far as possible, it was considered appropriate that the amount of provisional duty to be imposed should equal the dumping margins established.

(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

1. A provisional anti-dumping duty is hereby imposed on imports of video tape on reels or in cassettes falling within CN code ex 8523 13 00 and originating in the Republic of Korea or Hong Kong.

2. The rate of the duty, applicable to the net free-at-Community-frontier price before duty, is set out as follows:

(a) 10,8 % for the video tape in cassettes originating in the Republic of Korea, with the exception of imports which are manufactured and sold for export to the Community by the following companies. These shall be subject to the rate of duty mentioned hereunder:

Kolon Industries Inc.	7,6 %
Saehan Media Co.	4,5 %
SKC Ltd	6,6 %;

(b) 59,3 % for the video tape in cassettes originating in Hong Kong, with the exception of imports which are manufactured and sold for export to the Community by the following companies. These shall be subject to the rate of duty mentioned hereunder:

Magnetic Enterprise Ltd	20,5 %
Swilynn Ltd	8,1 %
Swire Magnetics Ltd	11,3 %;

(c) 5,5 % for the video tape on reels originating in the Republic of Korea with the exception of imports which are manufactured and sold for export to the Community by Saehan Media which shall be subject to a 1 % duty.

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

4. The release for free circulation in the Community of the products referred in paragraph 1 shall be subject to the provision of 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 that of 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, 23 December 1988.

For the Commission

Willy DE CLERCQ

Member of the Commission