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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1768/89

of 19 June 1989

imposing a definitive anti-dumping duty on imports of video cassettes originating in the Republic of Korea and Hong Kong, collecting definitively the provisional duty and terminating the anti-dumping proceeding with regard to the imports of video tape reels originating in the Republic of Korea

THE COUNCIL 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 Articles 9 and 12 thereof,

Having regard to the personal submitted by the Commission after consultation within the Advisory Committee as provided for under the abovementioned Regulation,

Whereas :

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EEC) No 4062/88 (1) (hereinafter referred to as the Commission Regulation) imposed a provisional anti-dumping duty on imports of video tape on reels or in cassettes originating in the Republic of Korea and Hong Kong. That duty was extended for a maximum period of two months by Council Regulation (EEC) NO 996/89 (2).

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping duty all the Korean exporters and two of the Hong Kong exporters requested and were granted an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings. The representatives of the Hong Kong Government were informed of the essential facts and considerations on the basis of which the provisional anti-dumping duties were imposed. They requested and were granted to make their views known on behalf of the Hong Kong video cassette industry as a whole and of specific Hong Kong exporters who were not otherwise represented.

(3) One Hong Kong company, Casin Video Cassette Ltd, replied to the questionnaire after the verifications were carried out at the premises of the other Hong Kong exporters and made known its views and applied to be heard according to Article 2 of the Commission Regulation. While its views were fully taken into account, no new investigation could be carried out in their respect since an additional verification would have delayed the further proceeding. Consequently, their reply to the questionnaire had to be disregarded.

(4) Upon request, parties were also informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to these disclosure meetings.

(5) The oral and written submissions and comments of the parties and of the representatives of the Hong Kong Government were considered and, where appropriate, the Commission's findings were modified to take account of them.

(6) Due to the complexity of the proceeding, in particular to the detailed verification of the data and due to the number of exporters involved and

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 356, 24. 12. 1988, p. 47.
(3) OJ No L 107, 19. 4. 1989, p. 1.

the numerous arguments put forward, the investigation could not be concluded within the time limit laid down in Article 7 (9) (a) of Regulation (EEC) No 2423/88.

C. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT AND COMMUNITY INDUSTRY

(7) In its provisional findings, the Commission considered that all Comunity-produced/VHS video cassettes and video tape reels are respectively like products to all video cassettes and video tape reels exported from Korea and Hong Kong and that the Community producers Agfa-Gevaert AG, BASF AG, PDM Magnetics and Magna Tonträger Productions GmbH form the Community industry, within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88. No new arguments were advanced by the exporters against these definitions. They are, therefore, confirmed by the Council.

D. NORMAL VALUE

1. Korean exporters

(a) *SKC and Goldstar*

(8) For these two exporters normal value was, as for the purpose of provisional findings, established on the basis of the video cassette models sold in sufficient quantities for consumption in Korea and at prices which permitted recovery of all costs reasonably allocated in the normal course of trade on the domestic market. Normal value was determined on the average domestic prices of these models. The sales transactions at prices below the cost of production were disregarded as provided for in Article 2 (4) of Regulation (EEC) No 2423/88 since they have been made in substantial quantities during the investigation period and at prices which did not permit recovery in the normal course of trade of all costs reasonably allocated and within this investigation period. The volume of the remaining sales transactions was still over the threshold, established by the Commission in previous cases to be 5 % of the volume of exports of the models concerned to the Community.

(b) *Kolon*

(9) for provisional findings, the normal value of the exporter was based on constructed value. It was claimed, however, that the normal value should be established on the comparable domestic prices. In order to determine whether these prices were less than the cost of production, the Commission calculated the average cost of production for the investigation period.

(10) As far as manufacturing overheads and financing costs were concerned, the Commission applied the calculation methods as explained in recitals 24 to 27 of the Commission Regulation. As to depreciation of machinery costs, an allocation was claimed of 42 % of the total depreciation for video cassettes and 58 % for video tape reels according to the alleged marketing strategy of this company. This claim, however, could not be accepted since insufficient evidence was provided to support this proposed allocation.

(11) The Commission considered that, in the absence of precise information, an allocation should be made according to the actual production costs of these two products during the investigation period. This resulted in an equal allocation of the depreciation for machinery costs between video cassettes and video tape reels.

(12) By these calculations, the actual costs of production for the like product in the ordinary course of trade on the Korean market were established and the sales transactions at prices below these costs of production were disregarded as provided for in Article 2 (4) of Regulation (EEC) No 2423/88. Indeed, these transactions have been made in substantial quantities during the investigation period and at prices which did not permit recovery in the normal course of trade of all costs within this investigation period. Since the volume of the remaining sales transactions was still over 5 % of the volume of exports of the models concerned to the Community, normal value was established on the weighted average sales price of these remaining sales on the Korean market.

(c) *Saehan Media*

(13) This exporter's own calculation of cost of production showed that, for the video cassette model most sold on the domestic market and comparable to the most exported model, substantial quantities have been sold at less than the costs of production and at prices which did not permit recovery, in the normal course of trade and within the investigation period, of all cost reasonably allocated. The remaining sales volumes were less than 5 % of the respective models exported to the Community. Therefore, the normal value had to be constructed.

(14) As far as manufacturing overhead costs are concerned, the Commission calculated the depreciation costs according to the total depreciation amount contained in the exporter's balance sheet for the investigation period. In this respect, the exporter argued that part of this amount is based on special depreciation for the financial year concerned which should not have any repercussion on the cost calculation. This special depreciation was applied according to specific provisions of the Korean tax regulations. The Commission found, however, that a similar specific depreciation was reported in the balance sheet for the two previous financial years. The Commission considered, therefore, that the part of this special depreciation for 1987 corresponding to a normal annual charge together with the normal depreciation of this exporter should be taken into

account for the calculation of the production costs. This approach was accepted by the exporter concerned. Consequently, these two depreciation amounts were then allocated to the video tape sector according to the ratio of the investment costs for the video and audio sectors of this exporter. The amount, for the video sector, was than allocated to the 11-month investigation period and, consequently, to video cassettes and video tape reels, according to the respective investment costs for these two products. In order to establish the depreciation amount per video cassette, this depreciation amount was allocated to the total number of video cassette sales. The allocation on sales was considered to be warranted in this specific case since, on the one hand, this exporter's production quantity approximated his sales quantity and, on the other hand, no precise production figures of video cassettes were supplied.

(15) As far as the licence fee for manufacturing and sale of video cassettes was concerned, the Commission based its calculation on the royalty amount agreed by the exporter with the Japanese licensor. In this respect, the exporter claimed a lower licence fee since some of his customers outside Korea paid the royalty directly to the licensor for the video cassettes purchased. This claim, however, could not be accepted. Normal value has to be established on the basis of the costs, in the ordinary course of trade, in the domestic market. Indeed, for the sales in the Korean market, this exportr had to pay the full royalty amount. Therefore, the equivalent of 10 yen was included in the manufacturing costs of this exporter.

(16) With regard to the amounts of selling, administrative and other general expenses the Commission applied the method as explained in recital 28 of the Commission Regulation. In this respect, income and expense items referring to foreign currency transactions as well as gains and losses on disposals of fixed assets and miscellaneous income and expenses were disregarded since the exporter could not prove any clear connection of these itemsto sales of video cassettes on the domestic market.

(17) As far as profit was concerned, it was taken from the average weighted profit realized by the other Korean exporters on their profitable sales of the like product on the Korean market, i. e. 10,5 %.

2. Hong Kong exporters

(18) For all Hong Kong exporters for which reliable accounting and cost data were available, the sales of the video cassette types on the Hong Kong market comprised less than 5 % of the volume of exports of the particular video cassette types exported to the Community. Normal values were therefore established by means of constructed values on the basis of the methods used for provisional determination of dumping, taking into account new evidence submitted by the exporters.

(19) In so far as the respective accounting documents of the exporters concerned did not show any payment of the royalty to the Japanese licensor, the usual licence fee for manufacturing and sale was added to the manufacturing costs. Indeed, it was considered that the liability for this royalty has to be considered as a cost incurred in the ordinary course of trade, as provided for in Article 2 (3) (b) (II) of Regulation (EEC) 2423/88.

(20) As far as waste was concerned, some exporters did not supply any costs for waste during the manufacturing process. In this respect and for these exporters, the usual waste costs expressed as a percentage of the total manufacturing costs were added to the costs of materials.

(21) Hanny Magnetics claimed the their global rate of manufacturing overhead costs shown in their accounting records should not be applied to the production costs of video cassettes. This exporter does not himself manufacture the video tape. Therefore, the proportion of this producer's on manufacturing costs for video cassettes was considerably lower than hat for other products manufactured by this producer. This argument has been onsidered acceptable and, therefore, a lower rate corresponding to the specific overhead manufacturing costs of video cassettes was applied.

(22) As far as the amounts for selling, general and administrative expenses were concerned, the Commission accepted the calculation of these expenses as shown in the accounting records of the exporters.

(23) The Council confirms this conclusion.

(24) As regards profit, no reliable accounting data were available for profits realised on the Hong Kong market on substiantial sales of video cassettes similar or identical to those models as exorted to the Community. the sales on the Hong Kong market of the video cassette types directly comparable to the exported video cassettes accounted for only a very small proportion of the volume of the exports to the Community. One exporter indicated that he had realized on his sales, made in substantial quantities on the Hong Kong market, of video cassette models identical to those exported to the Community, a return of considerably more than 8 %. Another exporter also realized, on its total sales of all types and models of video cassettes on the Hong Kong market, a profit of more than 8 % of its turnover. On its sales of video cassettes adapted to the PAL/Secam system, the same exporter realized a profit of less than 8 % on its turnover. Yet, these sales also included types intended for professional use. Such types were, however, not exported. In this situation, the Commission considered it appropriate and reasonable to apply a profit rate of 8 % on turnover for the construction of normal values for this and all the other Hong Kong exporters.

(25) The Council confirms this construction.

(26) As far as claims of some Hong Kong exporters with respect to the cost of production are concerned, Magnetic Enterprise claimed selling, general and administrative expenses for the like product which were lower than those shown in its profit and loss statement. Since this exporter manufactures only video cassettes and video tape reels, it was, however, considered appropriate to calculate the selling, general and administrative expenses on the basis of this exporter's accounting data shown in the profit and loss statement.

(27) Swire argued that it applies an accelerated depreciation rate for machinery and that, for the purposes of these proceedings, not this accelerated but the normal and industry representative depreciation rate should be applied. However, the Commission took the view that, in general, the exporter's own depreciation method should be taken into account if this method has already been applied by this exporter in previous accounting years, is reasonable and is not a method specifically established for these anti-dumping proceedings. Since the accelerated method is Swire's usual depreciation method, the exporter's claim had to be rejected.

E. EXPORT PRICE

1. Korean exporters

(28) With regard to exports by Korean exporters 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 net of all taxes, discounts and rebates actually granted and directly related to the sales under consideration.

(29) 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 exported product was first resold to an independent buyer. Discounts, rebates and the value of free goods directly linked to a sale under consideration were deducted from the price to the independent customer and suitable adjustment was made to take account of all costs incurred between importation and resale, including all duties and taxes.

(30) For one of the subsidiary companies of Goldstar, the costs for advertising the Goldstar brand name were reimbursed by the exporting parent company in Korea and, consequently shown as revenue in this subsidiary's accounting record. It was considered, however, that these advertising expenses have occurred at the subsidiary, are normally borne by the importing subsidiary and, consequently, have to be added to their costs. In this respect, the exporter argued that only the reimbursement of advertising costs related to the promotion of sales of branded video cassettes in the United Kingdom market could be considered as normally borne by the importer. Since the subsidiary sold only bulk video cassettes on this market, the advertising costs for the Goldstar brand name would not normally be borne by the importing subsidiary. The Commission, however, took the view that advertising for the exporter's brand name is also intended to have a promotional effect on the sales of branded and unbranded video cassettes sold by the Goldstar subsidiaries and that, therefore, these costs should be taken into account for reconstructing the export price.

(31) The Council confirms this conclusion.

(32) As far as profits are concerned, the Korean exporters supplied independent importers which have similar functions to the exporter's sales subsidiaries

in the Community during the investigation period was not more than 5 %. Consequently, this percentage was applied when reconstructing the export price.

2. Hong Kong exporters

(33) No Hong Kong exporter had importing subsidiaries in the Community. The export price had, therefore, been considered as being the price actually paid by the independent importers net of all taxes, discounts and rebates actually granted and directly related to the sales under consideration. This price has been established on fob Hong Kong harbour basis.

F. COMPARISON

(34) For the purpose of a fair comparison between normal value and export prices, the Commission took account, where appropriate, of differences affecting price comparability, such as differences in physical characteristics, and differences in selling costs, 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.

(35) Two of the Community producers claimed that adjustments should be taken into account for the differences in playing time for a VHS-T120 video cassette sold in the Korean market and a VHS-E180 video cassette sold on the Community market. The Commission found that both types of video cassette have very similar tape length and are identical in all other technical and physical aspects. However, due to the different recording and playing systems used in Korea and the Community (i.e. the NSTC and the PAL/Secam systems), the playing time of a T120 video cassette is usually two hours and that of an E180 video cassette is three hours in the respective markets. Since the difference in playing time is not due to differences in physical and technical characteristics of the two types of video cassette but is based on the different recording systems of the video cassette recorders used in both markets, this claim had to be rejected.

(36) One Korean exporter continued to claim an allowance 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. The claimed import charges were disproportionately higher than those claimed by other Korean exporters. This exporter was requested to supply evidence that the video cassette model sold on the Korean market and similar to the most exported model to the Community contained the imported materials for which he had claimed import charges. The evidence presented by this exporter did not, however, show to the satisfaction of the Commission that its claim was justified. Indeed, laboratory examination of the different video cassettes supplied by the exporter and carried out by the complainants showed that for the video cassettes sold on the domestic market no specific imported tapes have been used. Therefore, it was considered appropriate to grant only an allowance corresponding to the average amount claimed by the other Korean exporters.

(37) Saehan Media and Swire, in addition to the adjustment for directly related differences in selling expenses, claimed a supplementary allowance for differences in selling expenses and reduced profit resulting from export sales made to original equipment manufacturer (OEM) customers or in higher quantities than on the domestic market. They referred to the practice of the Community institutions in previous anti-dumping cases. These claims are, however, not sufficient evidence for proving differences in selling expenses and reduced profit, as requested by Article 2 (9) (b) of Regulation (EEC) No 2423/88. Accordingly, for this reason and, in addition, for those given in recital 29 of the Commission Regulation, these claims were rejected.

(38) Swire also claimed allowances for differences in selling expenses resulting from sales made under different conditions and from differences in transport costs. However, these claims were based on this exporter's assumptions and unsupported by any evidence. No allowance could, therefore, be granted.

G. DUMPING MARKETS

(39) Normal value for each of the models of each exporter was compared with export prices of comparable models on a transaction-by-transaction basis. The examination of the facts shows the existence of dumping in respect of imports of video

cassettes originating in Korea and Hong Kong and of video cassette types originating in Korea from all 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.

(40) The margins of dumping varied according to the exporter, and, expressed as a percentage of cif Community frontier values, the weighted average margins were as follows.

— video cassettes

Korean exporters

— Goldstar Co.	2,97 %,
— Kolon industries Inc.	2,03 %,
— Saehan Media Co.	1,96 %,
— SKC Ltd	3,81 %;

Hong Kong exporters

— Hanny Magnetics Ltd	21,99 %,
— Magnetic Enterprise Ltd	15,82 %,
— Swilynn Ltd	0,02 %,
— Swire Magnetics Ltd	4,96 %;

— Video tape reels

— Saehan Madia Co.	1,06 %,
— SKC Ltd	1,40 %.

(41) It was considered that, in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88. It would create an opportunity for circumvention of the duty and would constitute a bonus for non-cooperation to hold than the dumping margin for those exporters which neither replied to the Commission's questionnaire nor otherwise made themselves known — or which refused to cooperate with the Commission during the preliminary investigation — was any lower than the highest dumping margins determined with regard to any exporter who had cooperate in the investigation. Consequently, it was considered appropriate to use the dumping margins of 3,81 % for Korea and 21,98 % for Hong Kong for these groups of exporters.

(42) As regards certain Hong Kong exporters for which it was impossible, for specific reasons of the companies, to provide the relevant information on all the points necessary for a due dumping calculation, namely ACME, Casin Ltd, Wing Shing Cassettes Ltd and Yee Keung industrial Co. Ltd, the dumping margin was estimated on the basis of the facts available, that is to say on the basis of the information obtained by the other Hong Kong exporters. In this respect, the Council took account of the fact that dumping of most of the Hong Kong exporters was found and that the dumping margins varied considerably. The Council, contrary to the Commission's provisional conclusions, took the view that, given the fact that these firms were willing to cooperate even if unable to provide the necessary information, it would be inappropriate to use the highest dumping margin for these exporters and considered it warranted to apply the weighted average dumping margins found for the Hong Kong exporters, i.e. 9,34 %.

(43) The Council also considered the problem of companies which started or will start exporting own-produced video cassettes to the Community after the end of the investigation period. It came to the conclusion that it would create an opportunity for circumvention of the duty to apply any anti-dumping duty lower than the highest dumping margins determined. However, the Council notes that the Commission is ready to initiate without delay a review proceeding whenever the exporting company can show the Commission, and supply to that effect sufficient evidence, that it did not export video cassettes to the Community during the period of investigation (1 January to 30 November 1987), that it only started those exports after the said period and that it is not related to or associated with any of the companies subject to the present investigation.

(44) As far as the dumping margins of Swilynn Ltd for video cassettes and those of Saehan Media Co. and SKC Ltd for video tape reels are concerned and in view of the fact that video tape reels are exclusively exported to small and medium-sized assembling companies in the Community for further processing, these margins have to be regarded as *de minimis* and not justifying the adoption of protective measures.

H. INJURY

(45) In its provisional findings, the Commission concluded that the Community video cassette industry had experienced material injury. This finding was based mainly on the increase in the market share of the exporters involved in the proceeding, their price under cutting, and the development of the profit and loss situation of the complainants.

(46) These conclusions were contested by exporters, in particular as far as the complainants' sales in the Community, their production and the exporters' price undercutting were concerned. The Commission carried out further investigations and split more precisely their accounting data between figures concerning video cassettes and video tape reels. Consequently, some findings concerning the data in which injury has been determined had to be revised.

(47) As far as sales of video cassettes of the Community industry in the Community are concerned, they developed as follows:

— 1985	40,2 million units,
— 1986	51,2 million units,
— 1987 (1)	62,6 million units.

(48) This represents a development of the market shares of the complainants from 32,5 % in 1985 to 30,5 % in 1986 and to 29,7 % in 1987. During the same period, the market share of the exporters increassed from 8,7 % to 27,8 %. It appears from these revised figures that the market share of the Korean and Hong Kong producers more than tripied while that of the European producers decreased by 8,6 %.

(49) As far as prices are concerned, and in order to establish whether price undercutting existed, the Commission made, in its provisional findings, adjustments in order to compare the prices at the same level of trade and to take account of differences in quality of the products (see recital 48 of Commission Regulation). These adjustments were contested by Hong Kong exporters who argued that these adjustments should take into account the costs incurred by the independent importers in selling video cassettes and that the quality adjustment was too low. The complainants argued, in contrast, that not quality adjustment should be granted at all since consumers do not know about quality differences between the imported and the Community produced video cassettes and all video cassettes have to meet the quality standards of the Japanese licensor.

(50) These arguments could not, however, be accepted, since, on the one hand, the Commission compared the prices of the complainants as well as of the exporters to the first independent customers in the Community, duly adjusted to take account of differences in transport costs, import charges and ancillary costs. These customers are on both sides normally either wholesalers, distributors or other customers who buy substantial quantities. On the other hand, the Commission continued to consider it appropriate to apply a quality adjustment. The quality standards of the licensor are only minimum standards and do not exclude quality differences between video cassettes. Moreover, the respective customers of the exporters and the complainants are, indeed, perfectly aware of the alleged quality differences, since they are professional buyers. Furthermore, the exporters could not give sufficient reasons and evidence why an adjustment of 20 % was too low. The Council confirms, therefore, the Commission findings as set out in recital 49 of the Commission Regulation which showed considerable price undercutting.

(51) As far as capacity utilization is concerned, the further investigation of the Commission showed that the actual capacity rose from 63,9 million units in 1985 to 90,1 million units in 1986 and to 99,2 million units in 1987 with an average utilisation rate decreasing from 83,5 % in 1985 to 76,1 % in 1987. While production increased from 53,4 million units in 1985 to 73,2 million units in 1986 and 75,5 million units in 1987 the stocks of video cassettes increased from 9 million units in 1985 to 13,8 million units in 1986 and 11,1 million units in 1987. During the reference period, stocks represented about 14,7 % of the Community's industry's production.

(52) As regards video cassette sales of the Community industry, their value increased from ECU 232,9 million in 1985 to ECU 251,2 million in 1986 but decreased to ECU 211,5 million in 1987 while the quantities sold increased from 40,2 million units in 1985 to 51,2 million units in 1986 and to 62,6 million units in 1987.

(53) As regards the financial results of the Community producers, these showed a weighted average loss of 10,4 % during the investigation period.

(54) As regards the other relevant economic factors, they remained unchanged after the further investigation.

(55) In recitals 55 to 57 of the Commission Regulation, the reasons are specified which led the Commission to conclude that the Community video cassette industry experienced material injury. These reasons have not changed after the further investigation. Indeed, the results of this further investigation show that the development of the Community industry's market share and sales were more nega-

(1) All data for 1987 refer to January to November of that year.

tive than assumed for the provisional findings. Compared with the general consumption, the Community industry's capacity, production and sales in volume increased at much lower rates. The sales value even decreased considerably because of the price decrease for video cassettes. This price decrease led to considerable losses for the whole industry which puts at risk the video cassette production in the Community and, consequently, employment and the further development of the Community industry in this sector.

(56) These reasons led the Council to consider that the market position and financial performances of the Community industry are on a declining trend and that the Community industry is suffering material injury.

I. CAUSATION OF INJURY BY THE DUMPED IMPORTS

(57) The Commission concluded in recital 58 of its Regulation that the effects of Korean and Hong Kong imports had to be analysed cumulatively and in recitals 59 to 63 of the said Regulation that the material injury suffered by the Community industry was caused by dumpted imports of video cassettes originating in Korea and Hong Kong.

(58) With regard to this conclusion, Korean and Hong Kong exporters raised in substance three arguments, firstly that the Commission falled to show the specific injurious effect of dumped imports of the individual exporters and, secondly, that the increase in the market share by the exporters was made at the expense of exporters from other countries and not of the Community industry, and thirdly, that the Community industry made wrong commercial decisions in investing heavily in advanced technology to produce high-quality video cassettes.

(59) The Council cannot accept these arguments. In accordance with its position in previous cases and with the jurisprudence of the Court of Justice, the Council considers that the injurious effects of the dumped imports of individual exporters concerned have to be assessed together since an individual injury determination would render Regulation (EEC) No 2423/88, in the vast majority of cases, unworkable.

(60) As to the second argument, the results of the further investigation show a clear parallel between the increase of the dumped exports and a decrease of the Community industry's market share, capacity utilization, sales value (from 1986 to 1987, when imports of Korean and Hong Kong video cassettes almost doubled) and profitability.

(61) As to the third argument, the investments of the Community industry were carried out to reduce the cost of production and to defend the high-quality brand image which they enjoy. Such investments cannot be regarded as wrong business decisions. Furthermore, no evidence was supplied by the exporters, nor found by the Commission, indicating that the material injury of the Community industry was caused by other factors such as volume and prices of imports which were not dumped. Moreover, the Council is of the opinion that, even if it were correct that the Community industry is facing difficulties attributable in part tocauses other than the dumping, this is not a sufficient reason for concluding that the difficulties resulting from the dumped imports cannot be qualified as material in jury and for depriving it of all protection againast the injury caused by the dumping.

(62) In conclusion, the Council confirms the Commission's findings that the volume of the dumped imports, their market penetration, and the prices at which the dumped video cassettes have been sold to or in the Community have caused the material injury to the Community industry.

J. COMMUNITY INTEREST

(63) In its provisional findings, the Commission considered the interests of the Community video cassette industry, of the assemblers, duplicators and video cassette dealers, consumers and end users. For the reasons given in recitals 64 to 70 of the Commission Regulation, it concluded that the Community interests call, after all, for granting protection to the Community industry.

(64) Some exporters contested this conclusion with the argument that the imposition of anti-dumping duties is not in the interests of the consumers.

(65) As to this argument, it should be noted, firstly, that the purpose of anti-dumping duties is, in general, to remove distortion of competition arising from unfair trading practices of third country exporters and thus to re-establish a situation of open and fair competition on the Community market which is fundamentally in the general Community interest and also benefits consumers. The Council is of the opinion that in the present case anti-dumping duties will have exactly this effect and will neither reduce fair competition nor prevent Korean and Hong Kong exporters from access to the Commu-

nity market or from benefiting from the expected market expansion. The limited disadvantages to consumers of possible price increases are, in the Council's view, outweighed by the medium-term benefits of safeguarding the Community video cassette industry against unfair trading practices and maintaining a wider range of suppliers to the video cassette market. Indeed, the medium- and long-term interests of the consumers are better served by the preservation of a sound and healthy Comunity industry which will still be exposed to fair and normal competitive constraints from within and outside the Community than by abandoning the Community's video cassette production. Finally, it should be kept in mind that the price advantages which the buyers previously enjoyed originated from unfair business practices and that there is no justification for allowing these unfair low prices to persist.

(66) As to the the arguments raised by the exporters, they have already been dealt with in detail in the Commission Regulation. No new arguments have been submitted in this respect. Therefore, for the above mentioned reasons and for those expressed in recitals 64 to 70 of the said Regulation, the Council concludes that it is in the ovveriding interests of the Community that the injury due to dumping be eliminated and that the Community industry be accorded protection against dumped importes of video cassettes from Korea and Hong Kong.

K. DUTY

1. Retroactive duties

(67) The complainants requested the imposition of retroactive duties according to Article 13 (4) (b) of Regulation (EEC) No 2423/88.

(68) The Council could not, however, determine that there was a history of dumping which caused injury. As far as the question is concerned, whether the importers were, or should have been aware, that the exporters practised dumping and that such dumping would cause injury, the complainants submitted press articles referring to the present anti-dumping proceeding. This cannot, however, be considered as sufficient evidence to prove that the importers were, or should have been, aware thast the exporters practised dumping during the investigation period but only that the importers were, or should have been aware of anti-dumping investigations carried out by the Commission after the investigation period. Moreover, the dumping margins found are relatively low. It cannot, therefore, be reasonably considered that importers should have been aware of any price discrimination betweeen the domestic and export prices of the exporters.

(69) Consequently, the request for retroactive duties has to be rejected.

2. Amounts of the duty

(70) As to the amount of the duties necessary to eliminate the material injury, the Commission concluded in its Regulation that the duties have to be at the level of the dumping margins found because the level of injury established was considerably higher.

(71) The further investigations of the Commission have shown that the injury is even more serious than assumed. Indeed, when only taking into account the average loss margin of the Community industry (10,4 %), and a target profit margin of 12 %, as considered reasonable in recital 71 of the said Regulation, the industry threshold already exceeds the highest dumping margin found.

(72) The Council concludes, therefore, on the basis of the injury calculation threshold method described in recitals 71 and 72 of the Commission Regulation and for the abovementioned reasons that duties should be imposed at the level of the actual dumping margins found.

(73) The definitive duty to be imposed should apply to all VHS video cassettes imported from Korea and Hong Kong.

L. UNDERTAKINGS

(74) One Hong Kong exporter, Wing Shing, has offered a price undertaking which is considered to be acceptable. The effect of this undertaking will be to increase the prices of the products concerned to an extent sufficient to eliminate the margin of dumping found for this exporter. After consultation with the Advisory Committee, this undertaking was accepted by Commission Decision 89/376/EEC [1].

M. COLLECTION OF PROVISIONAL DUTIES

(75) In view of the dumping margins established, and the seriousness of the injury caused to the Community industry, the Council considered it necessary that amounts collected by way of provisional anti-dumping duties should be definitively collected to the extent of the amount of the duty definitively imposed. In respect of the exporter whose under-

[1] See page 30 of this Official Journal.

taking has been accepted, the provisional duty should be collected at the level of the dumping margin definitively estabilished. In respect of the exporters whose dumping margins do not justify the adoption of protective measures, the provisional duty collected has to be released entirely. Provisional anti-dumping duties collected or securities received for video cassettes which are not covered by the definitive anti-dumping duties and those collected or securities received for video tapes on reels should also be released.

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of VHS video tape in cassettes falling within CN codes 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) 3,8 % for the video tape in cassettes originating in thel Republic of Korea, with the exception of imports of video cassettes which are manufactured and sold for export to the Community by the following companies. Such imports shall be subject to the rate of duty mentioned hereunder :

— Goldstar Co.	2,9 %,
— Kolon Industries inc.	2,0 %,
— Saehan Media Co.	1,9 % ;

(b) 21,9 % for the video tape in cassettes originating in Hong Kong, with the exception of imports of video cassettes which are manufactured and sold for export to the Community by the following company as such imports shall be subject to the rate of duty mentioned hereunder :

— Magnetic Enterprise	15,8 %,
— Swire Magnetics Ltd	4,9 %,
— ACME	9,3 %,
— Casin Ltd	9,3 %,
— Yee Keung Industrial Co Ltd	9,3 %.

3. The duty specified in paragraph 2 (b) shall not apply to video tape in cassettes manufactured and sold for export to the Community by Swilynn Ltd and Wing Shing Cassette Ltd, Hong Kong.

4. The anti-dumping proceeding concerning Swilynn Ltd is hereby terminated.

5. The duty specified in Article 1 shall lnot apply to video tape in cassettes otheir than those falling under VHS standards.

Article 2

The amounts collected or secured by way of provisional anti-dumping duty under Regulation (EEC) No 4062/88 shall be collected at the date of duty definitively imposed. It shall be collected up to the following rates for

— Wing Shing	9,3 %

Amounts collected or secured which are not covered by the above rates of duty shall be released.

Article 3

The anti-dumping proceeding concerning imports of video tape on reels falling within CN code ex 8523 13 00 and originating in the Republic of Korea is termined.

The amounts collected or secured by way of provisional anti-dumping duty under Regulation (EEC) No 4062/88 shall be released.

Article 4

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

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

Done at Luxembourg, 19 June 1989.

For the Council

The President

C. SOLCHAGA CATALAN