COMMISSION REGULATION (EEC) No 2140/89

of 12 July 1989

imposing a provisional anti-dumping duty on imports of certain compact disc players originating in Japan and South 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 June 1987 the Commission received a complaint lodged by the Committee of Mechophonics Producters and Connected Technologies (the 'Compact' Committee) on behalf of manufacturers accounting for most of the Community production of the product in question. The complaint contained evidence of dumping 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 imports into the Community of compact disc players (CDPs), corresponding to CN code 8519 99 10, originating in Japan and South Korea and commenced an investigation.

(2) The investigation of dumping covered the period from 1 June 1986 to 31 May 1987.

(3) 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 heraring.

A major part of the known Japanese and Korean exporters, some importers and a major part of known Community producers made their views known in writing. All those exporters and the major proportion of importers who made themselves known to the Commission requested and were granted a hearing.

(4) The Commission requested and received detailed written submissions from the complainant Community producers, the exporters and a number of importers. Fifteen Japanese exporters created the so-called 'CDP-Dumping Committee' and made common submissions on injury and Community interest issues.

(5) The Commission verified all information to the extent considered necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

(a) *EEC producers :*

Philips, Eindhoven, Netherlands,
Bang and Olufsen, Struer, Denmark,
Grundig, Fuerth, Germany ;

(b) *Japanese Producers/Exporters :*

Nippon Columbia Co. Ltd, (Denon) Tokyo,
Funai Electric Co. Ltd, Osaka,
Kenwood Corporation, Tokyo,
Lux Corporation, Tokyo / Alpine Electronics Inc., Tokyo,
Marantz Japan Inc., Tokyo,
Matsushita Electric Industrial Co. Ltd, Osaka,
Onkyo Corporation, Osaka,
Pioneer Electronic Corporation, Tokyo,
Sansul Electronic Co. Ltd, Tokyo,
Sanyo Electric Co. Ltd, Osaka,
Sony Corporation, Tokyo,
Teac Corporation, Tokyo,
Victor Company of Japan (JVC), Tokyo,
Nippon Gakki Corporation (Yamaha), Hamamatsu ;

(c) *Korean Producers/Exporters*

Inkel Corporation Ltd, Seoul,
Goldstar Co. Ltd, Seoul,
Samsung Electronics Co. Ltd, Seoul,
Haitai Electronics, Co. Ltd, Seoul ;

(d) *Importers in the Community :*

Denon Electronic GmbH, Germany,
Hayden Laboratories Ltd, United Kingdom,
Funai Electronics Int. GmbH, Germany,
Goldstar Deutschland GmbH, Germany,

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 178, 7. 7. 1987, p. 7.

Hitachi Sales UK Ltd, United Kingdom,
Hitachi Sales Europa GmbH, Germany,
Kenwood Electronics GmbH, Germany,
Trio-Kenwood, France,
Alpine Electronics, France,
Panasonic France SA, France,
Panasonic Deutschland GmbH, Germany,
Panasonic UK Ltd, United Kingdom,
Panasonic Italia Spa, Italy,
Pioneer High Fidelity (GB) Ltd, United Kingdom,
Pioneer Electronics Europe NV, Belgium,
Pioneer Electronics (Italia) Spa, Italy,
Onkyo Deutschland, Germany,
Fisher Hi Fi Europe Vertriebs — GmbH, Germany,
Sanyo Marubeni (UK) Ltd, United Kingdom,
Sony Deutschland GmbH, Germany,
Sony France SA, France,
Sony UK Ltd, United Kingdom,
JVC Audio France SA, France,
JVC (UK) Limited, United Kingdom,
JVC Deutschland GmbH, Germany,
Yamaha Electronic Europe GmbH, Germany.

(6) This investigation has exceeded the normal time period because of the large number of exporters and importers involved, the very high number of models of CDPs sold on both the Community and the domestic markets of the exporters and also the variety and complexity of the distribution systems of individual companies on the individual markets.

B. PRODUCT UNDER INVESTIGATION AND LIKE PRODUCT

(7) The products under investigation are 'stand-alone' sound reproducers with a laser optical reading system. The term 'stand-alone' is to be understood as relating to the so-called 'living-room' self-contained player whether incorporated or not in a 'rack' system but provided it can function separately from the 'rack' system, i.e. it has its own power supply and commands.

(8) Multi-disc CDPs which are able to accomodate more than 10 compact discs (CDs), CDPs for installation in motor vehicles and portable CDPs are not considered to be 'stand-alone' as defined in recital 7 above and are thus excluded from the current proceeding. It is generally accepted that these categories of CDPs have important physical differences (capacity, size, battery operation, etc.) from 'living room' CDPs and have also specific uses (professional use in the case where more than 10 CDs can be accommodated, specific use in motor vehicles and independent operation for portable models).

(9) Stand-alone CDPs are sold with numerous features (remote control, digital and subcode outputs, programme memory size, etc.) and combinations of features. There are some 300 different models on the Community market and practically the whole range of CDPs with different combinations of features are produced by the EEC industry.

(10) Two exporters claimed that certain models of stand-alone compact disc players should not be considered as like products because of differences in the level of technical specifications and the sophistication of features.

(11) In the light of this situation the Commission considered whether clear dividing lines could be drawn between the large variety of models. In this respect the Commission found that all the models on the market have the same basic physical and technical characteristics and the same basic application and use. The differences in features, appearance and quality of musical reproduction between the various models are outweighed by the common basic physical characteristics and functions which give to all models of stand-alone CDPs a high degree of interchangeability from the consumer's point of view. Therefore, clear dividing lines could not be established. As a result, any approach which attempts to establish different like products within the range of stand-alone compact disc players would be arbitrary, complex, open to circumvention and probably unworkable.

(12) The Commission has therefore come to the conclusion that stand-alone compact disc players are sufficiently alike to be considered as one like product in the context of this proceeding. Consequently, for the purposes of the Commission's preliminary findings, all Community-produced stand-alone compact disc players exported from Japan and Korea.

C. EXPORT PRICE

(a) Sales to independent importers

(13) With regard to export sales made by Japanese and Korean producers directly to independent importers in the Community, prices were determined on the basis of the prices actually paid or payable for all sales of the product sold for export.

(b) Sales to related importers

(14) In cases where exports were made to subsidiary companies which imported the product into the Community it was considered appropriate, in view of the relationship between exporter and importer, that export prices be reconstructed on the basis of

the prices, net after discounts and rebates, at which the imported product was first resold to an independent buyer. In this respect the Commission made its calculations in accordance with Article 2 (13) of Regulation (EEC) No 2423/88, and based them, for each exporter concerned, on approximately 70 % of resales in the Community by its related importers.

(15) In the reconstruction of export prices, account was taken of all costs normally incurred between importation and resale. Where allocations of costs were necessary these were, in most cases, made on the basis of turnover. The costs and turnover used for this purpose were generally those of the related importers' last financial year. Only where the Commission received satisfactory proof that an alternative method would more appropriately reflect the cost incurred was such a method used.

(16) The on-the-spot verification at Matsushita Italy's premises showed significant discrepancies between the company's reply to the questionnaire and its internal documents in respect of total turnover, total sales of CDPs and certain expenses. In this regard it was found that a substantial amount of cash discounts and certain sales expenses in the form of 'give-aways' were not reported. As the company failed to provide information on the amounts involved, the Commission calculated these on the basis of the facts available. The amount deducted on this basis was 16 % of the resale price, as an average for all the models concerned.

(17) On the basis of the information available to the Commission it was determined that a reasonable profit margin for the related importers, within the terms of Article 2 (8) (b) of Regulation (EEC) No 2423/88, was 5 %. This amount has been challenged by two exporters but their submissions failed to show, to the satisfaction of the Commission, that another profit rate was more suitable.

(18) Funai Japan declared in its replies to the questionnaires that all its exports to the Community were made to independent customers. 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 CDPs to customers in the Community. Funai Japan claimed that Funai Electric Trading (Europe) GmbH should be considered as an agent as it did not keep stocks and operated on a fixed profit margin. It was established, however, that Funai Japan issued invoices to Funai Electric Trading (Europe) GmbH and that the latter 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. In the opinion of the Commission there can, therefore, be no doubt that Funai Electric Trading (Europe) GmbH fulfilled the normal functions of an importing subsidiary in the Community.

(c) **Categories of customers**

(19) Several exporters claimed that their export sales were made to original equipment manufacturers (OEMs) or to other categories of customers (national or regional distributors) different to those to which sales were made on the domestic market and that account should be taken of this level of trade difference.

(20) For this purpose the Commission examined whether the evidence presented by these exporters enabled it to identify the functions of the exporters' customers and showed that these functions, for the market concerned, are clearly reflected in the quantities sold and the pattern of prices charged. In this respect the Commission had to take account of the fact that export prices, whether actually charged or reconstructed, may correspond to any level of trade, i.e. OEM, large or small distributor or retailer.

(21) With regard to OEM sales it was found that these should be treated separately because they were shown to be distinct from other sales as the products were manufactured to the buyer's specifications for sale under its brand name. In addition, this distinctiveness was clearly reflected in the quantities sold and the prices charged for the brand name concerned. Separate export prices were, therefore, established for these sales on the basis of the prices charged when the products were sold for export by the manufacturer to the OEMs.

(22) With regard to the exporters who claimed that their export sales were made to distributors, Sony provided evidence allowing the Commission to conclude provisionally that its claim was justified in the light of the functions of these customers which were clearly reflected, for the markets concerned, in the quantities sold and in the pattern of prices charged. As to the other exporters, the evidence submitted was not sufficient to justify their claims.

D. NORMAL VALUE

(a) **Domestic prices**

(23) Generally, for most of the producers/exporters included in the proceeding, normal value was established on the weighted average domestic prices of all sales to independent customers. These prices were net of all discounts and rebates directly linked to the sales of CDPs.

(24) Matsushita did not cooperate to the extent necessary during the on-the-spot investigation. It had not prepared, as requested by the Commission in its questionnaire, the transaction-by-transaction listing for its sales of CDPs on the domestic market and this impeded the Commission's verification of invoices for the product concerned. Furthermore, confusing information was supplied to the Commission during the on-the-spot investigation concerning the discounts given to independent buyers. The Commission was therefore unable to follow its normal verification procedures during the on-the-spot investigation and consequently the Commission estimated the discounts on the basis of the facts available.

(25) One Korean exporter claimed, but the Commission did not accept, that the Korean market for CDPs was too small, either relatively or absolutely, to be used as a basis for comparison.

(26) The same exporter also argued that its sales on the domestic market were very low in absolute terms and that, accordingly, they should not be considered as being in the ordinary course of trade although, in relative terms, those sales represented more than 5 % of the export sales of the models concerned to the Community.

(27) The Commission considers that a low absolute amount of domestic sales cannot by itself be a sufficient reason to consider that these sales are not in the ordinary course of trade and justify a deviation from the normal practice of establishing normal values on the basis of the domestic sales of models which in quantity terms exceed 5 % of export sales to the Community.

(b) **Categories of customers**

(i) *Selective normal value — OEMs*

(28) Separate normal values were established for sales to OEMs because the Commission accepted that these customers had functions which were clearly distinct from those of other categories of unrelated purchasers and that these different functions were clearly reflected, for the market concerned, in the quantities sold and in the pattern of prices charged for each brand.

(ii) *Selective normal value — own brand sales*

(29) Sony claimed that a distinction had to be made between categories of its first independent buyers. It claimed in particular that unrelated distributors had functions clearly distinct from those of other categories of unrelated customers and that these different functions were clearly reflected in the size of the quantities sold, in the pricing policy and also in the pattern of prices found on the market.

(30) The Commission, during the on-the-spot investigation established that, in the exporter's distribution system, the independent distributors had functions which were distinct from all other categories of unrelated clients in so far as these distributors sold only to the other categories of clients, i.e. retailers and end-users. The Commission also compared the quantities sold, the pricing policy and the level of prices charged to the independent distributors with those charged to other categories of unrelated clients. The result of the comparison showed a clear distinction in quantities sold, a clear difference in pricing policy and a consistent pattern of prices reflecting the distinct functions of the distributors compared with other independent customers.

(31) In view of this evidence the Commission accepted that, for Sony, sales to independent distributors were made at a level of trade different to the sales made to other categories of clients. The Commission also accepted that domestic sales to distributors was the most appropriate level of trade for comparison with export sales and that, accordingly, the normal value for this exporter should be established selectively on the basis of the weighted average domestic prices of its sales to independent distributors.

(32) Some exporters also claimed that the normal value established for them on the basis of all domestic sales to independent customers were not comparable to the export price because, they alleged, the latter was a price to distributors whereas their sales on the domestic market were made to other catego-

ries of clients, i.e. dealers and end-users. These exporters claimed that, in order to correct these alleged differences in level of trade, account should be taken of the differences in costs involved in selling to the different levels of trade.

(33) The Commission carefully examined these claims and preliminarily concluded that none of these claims were substantiated. Indeed, evidence submitted was not sufficient to adequately identify either the export or the domestic level of trade. Consequently, the exporters concerned could not prove satisfactorily that their domestic and export prices were at a different level of trade and that the alleged difference affected price comparability.

(34) As far as the reference to differences in the costs involved is concerned, the Commission considers that such differences cannot, under any circumstances, be accepted as a reliable indication of differences in level of trade or as a substitute to proving differences in prices corresponding to this difference in level of trade. This is because, on the one hand, differences in costs may exist for a variety of reasons other than differences in level of trade and, on the other hand, differences in costs are not necessarily reflected in prices, in which case price comparability would not be affected.

(35) Consequently, the Commission preliminarily concluded that, for the exporters concerned, it was impossible to identify or establish a more appropriate basis for the establishment of normal value than the average price of all sales to independent customers.

(c) **Transfer prices**

(36) Despite the claim of certain exporters to the contrary, the Commission considered that it would be inappropriate in this case to take account of any transfer price between related companies or branches of any exporter when establishing normal value by reference to domestic prices. Normal values were, therefore, established on the basis of the prices charged on sales made by the manufacturers' sales department or their related sales companies to independent buyers.

(i) *Transfer prices — economic entity*

(37) One exporter claimed that normal value should be determined on the basis of transfer prices between the sales department of the production company and its related sales subsidiaries because the production company performed the bulk of the sales functions, leaving very limited sales functions to the sales companies. It also indicated that the production company sold CDPs through 77 related sales companies in the domestic market and that, for these reasons, the functions of the related sales companies could not be considered as being those of a normal sales department.

(38) The Commission considers that the specific division of both production and sales activities within a group made up of legally distinct companies can in no way alter the fact that the group is a single economic entity which carries out in that way activities which, in other cases, are carried out by single legal entities, i.e. producing and selling the product to the first independent customer with sufficient resources to be competitive.

(39) With regard to the sales functions, the number of the sales companies and the specific division of these functions between the sales department of the production company and the related sales companies is the result of internal arrangements within the company. The fact that the production company performs part or even the bulk of sales functions does not change the fact that these functions are carried out in conjunction with those of the related companies and the totality of these activities are necessary to accomplish the normal selling functions to the first independent buyer. Indeed, it would not make any sense for these activities to be performed twice. In addition, it was neither claimed, nor proved, that any of these activities was not necessary in order to sell the product concerned to the first independent customer.

(40) It follows that whatever the split or size or organization of the production and sales activities, the only important factor for limiting the extent of the economic entity is the function of selling competitively, with the resources required by the specific conditions of the market, to the first independent buyer.

(41) The Commission has therefore come to a preliminary conclusion that the activities and functions of the various parts of the entity are to be taken as a whole and consequently the normal value should be established for the exporter concerned on the basis of all its sales to independent customers.

(ii) *Transfer prices — Article 2 (7)*

(42) Three exporters further indicated that the transfer prices between the production company and the sale subsidiaries should be taken into consideration for the calculation of normal value, as provided for

by Article 2 (7) of Regulation (EEC) No 2423/88, because they alleged that transfer prices were at approximately the same level as those to certain independent purchasers.

(43) The Commission established that for one of the exporters concerned 99,3 % of domestic sales of CDPs were made via the 77 related sales companies and only 0,7 % were made via the two independent sales companies. For a second exporter concerned, 100 % of its domestic sales were made via 20 sales subsidiaries. For these two exporters, the prices and costs involved could not be compared to transactions between unrelated companies because such transactions in fact did not exist. Under such circumstances, transfers between related sales companies could not be considered to be made in the ordinary course of trade. As far as a third exporter was concerned, the evidence available to the Commission did not allow it to conclude that the prices and costs involved in the sales to related distribution companies were comparable to those involved in the sales to independent distributors within the terms of Article 2 (7).

(44) In any case, the Commission considers that it would not be consistent to apply Article 2 (7) in cases where sales organizations merely form part of an economic entity as defined in recitals 37 to 41 above.

(45) Consequently, for all three exporters concerned, the sales to related sales companies were considered as not being in the ordinary course of trade for the calculation of the normal value.

(d) **Constructed values**

(46) Where models comparable to those sold for export were not sold or were not sold in sufficient quantities or where sales were not profitable, during the reference period, the Commission determined normal value on the basis of constructed value.

(47) The constructed values were calculated by taking all costs, both fixed and variable, in the country of origin, of materials and manufacture plus selling, administrative and other general expenses and a reasonable margin for profit. Where an allocation of costs was necessary, this was generally made on the basis of total CDP turnover, in accordance with the exporters last available audited accounts. Only where the Commission received satisfactory proof that an alternative method would be more appropriate, was such a method used.

(48) Where there were no or insufficient (i.e. less than 5 % of quantity exported) sales on the domestic market, the amounts used in the constructed values for selling, general and administrative expenses and profit were the weighted averages of the expenses incurred and profit realized by the same producer or exporter on its other profitable models sold on the domestic market, or where it did not have sales of other models, by reference to the weighted average of the expenses incurred and profit realized by all other producers and exporters on domestic sales of profitable models of CDPs.

(49) In cases where sales on the domestic market of a producer or exporter were unprofitable but sold in sufficient quantities, the SGA expenses used in its constructed value were those of its domestic sales, the profit being the weighted average calculated for other exporters.

(50) One of the Korean exporters claimed that the Commission should not, in constructing normal values, apply the average profit realized by it on its profitable sales because the quantities, though they exceeded 5 % of export sales, were relatively small and, consequently, the profit realized was unreliable and not suitable for use. However, the Commission considered it reasonable to apply the actual profit realized on sales made in sufficient quantities to those models for which constructed values had to be calculated.

(51) With regard to the Korean exporters it was established that they made no sales to OEM customers on their domestic market whereas two of them exported to Community OEMs. In view of the Commission's findings during this investigation, that OEMs were, without exception, a separate and distinct class of customer, it was considered that a reasonable estimate should be made of the differences which could exist between own brand and OEM prices if sales of the latter had taken place on the Korean market.

(52) Accordingly, when constructing normal values for the Korean OEM sales, the Commission applied a profit rate which only corresponded to 30 % of that realized on the exporter's brand sales or, if the exporter had no domestic sales, 30 % of the average profit made by other exporters.

E. COMPARISON

(53) For the purpose of a fair comparison between normal value and export prices due allowance in the form of adjustments was made in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88, to both the export price and the normal value for the differences affecting price comparability.

(54) As regards differences in physical characteristics claims for allowances were made concerning certain differences in technical specificaties and capabilities between certain domestic and export models. Adjustments were generally made where the effect on market values of such differences could be demonstrated.

(55) Some companies claimed allowances for adjustments to the normal value in respect of part or all overheads and general expenses of domestic sales divisions or domestic sales companies. Sepcific claims in respect of expenses such as sales promotion including give-aways, amortizations, travel expenses of salesmen, etc. were also made. No allowances were granted for expenses which did not fall within the categories of allowable expenses in Article 2 (9) and (10) of Regulation (EEC) No 2423/88.

(56) Matsushita and Sony claimed an allowance for warranty and servicing expenses incurred by related servicing companies. It was found that most of these expenses were not directly related to sales of CDPs. In the case of Matsushita it was even established that these expenses were not fully included in the total costs of production it presented for each model. In addition, both companies failed to provide a proper quantification of these expenses. The Commission, therefore, estimated all these expenses on the basis of available information and only granted allowances to the extent that these expenses constituted direct costs of providing warranties, guarantees, technical assistance and services.

(57) TEAC's claims for allowances were provisionally rejected because it failed to provide a comprehensible quantification of its claim which could be used as presented or as a basis to estimate the amount of the expenses for which it was claiming adjustments.

(58) As regards salesmen's salaries, several exporters had claimed costs for salesmen together with costs for personnel other than salesmen, i. e. personnel not wholly engaged in direct selling activities. The amount of the allowance granted was, therefore, estimated in each case on the basis of the facts available.

(59) Some parties also raised the point that since, in the case of associated importers, all costs of the importer are taken into account for the purpose of constructing the export price, an identical approach shoud be followed for part of the producer's or exporter's expenses on the domestic market, or where sales on the domestic market are made through an associated sales company. This argument confuses two different issues, namely the establishment of the domestic and export price and the subsequent allowance to be made for differences affecting price comparability when comparing these prices. For the purpose of constructing the export price, Regulation (EEC) No 2423/88 prescribes the deduction of all costs incurred between importation and resale. This is designed to arrive at an export price which is not influenced by the relationship between the exporting company and its associated importer thus placing the related importer on a par with an independent importer (recitals 14, 15 and 17). The normal value is established by using the comparable price in the ordinary course of trade (recitals 23, 28 and 31), or on a constructed basis where no such price is available (recitals 46 to 52). As regards the subsequent comparison between normal value and export price, other rules apply which have led to price adjustment for all allowable expenses. At this stage the same criteria are applied, whether the factors to be taken into consideration are in respect of sales to the domestic market or for export, as explained in recitals 53 to 58 above.

(60) Some exporters also claimed an allowance for alleged differences in costs incurred in selling to allegedly different categories of customers on the domestic and export markets. In cases where the question of selling to different categories of customers was raised by the exporters, this problem has essentially been dealt with under recitals 19 to 22 and 28 to 35 above. In addition, the adjustments for differences in selling expenses were granted in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88 where appropriate.

F. DUMPING MARGIN

(61) Nomal values were compared with the export prices on a transaction-by-transaction basis. The preliminary examination of the facts shows the existence of dumping in respect of compact disc players originating in Japan and Korea for all the exporters investigated, the margin of dumping being equal to the amount by which the normal value as established exceeded the price for export to the Community.

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

Japanese exporters :

Nippon Columbia Co. Ltd (Denon) Tokyo : 17,59 %,
Funal Electric Trading Co. Ltd, Osaka : 8,49 %,
Kenwood Corporation, Tokyo : 20,05 %
Lux Corporation, Tokyo/ Alpine Electronics Inc., Tokyo : 1,54 %,
Marantz Japan Inc., Tokyo : 2,29 %,
Matsushita Electric Industrial Co. Ltd, Osaka : 42,61 %,
Onkyo Corporation, Osaka : 8,57 %,
Pioneer Electronic Corporation, Tokyo : 34,56 %,
Sanyo Electric Co. Ltd, Osaka : 27,82 %,
Sony Corporation, Tokyo : 15,97 %,
Teac Corporation, Tokyo : 18,34 %,
Victor Company of Japan (JVC), Tokyo : 20,98 %,
Nippon Gakki Corporation, Yamaha Hamamatsu : 45,57 % ;

Korean exporters

Inkel Corp. Ltd, Seoul : 20,10 %,
Goldstar Co. Ltd, Seoul : 32,56 %,
Samsung Electronics Co. Ltd, Seoul : 23,07 %,
Haitai Electronics, Co. Ltd, Seoul : 21,34 %.

(63) Sharp made itself known but refused to submit the response to the Commission's questionnaire for exporters and related importers.

(64) Chou-Denki replied to the Commission's questionnaire only in part and, therefore, did not provide the Commission with the necessary information.

(65) NEC denied the Commission the opportunity of carrying out an investigation at its premises in Japan.

(66) Toshiba denied the Commission the opportunity of carrying out an investigation at the premises of two of its sales subsidiaries in the Community.

(67) Hitachi did not provide in its reply to the questionnaire the information requested on the SGA expenses and the selling prices of its related distributors to the first independent buyer on the domestic market. These represented 60 % of its total domestic sales of the like product. Despite the Commission making a second request for this information, the exporter did not provide it on the grounds that :

(a) it had electronic data-processing difficulties, and

(b) it did not agree that the Commission should use prices charged by the related distributors to establish normal value.

As to the first contention, no mention of these 'difficulties' was made by the exporter within the time limit clearly specified in the questionnaire. These were brought to the Commission's attention six months after receipt of the answer to the questionnaire.

As to the second contention, it is the established practice of the Community authorities not to accept as a basis for normal value transfer prices between manufacturing worskhop and sales companies or sales distributors, where, as in this instance, the manufacturing and sales functions are divided within the same corporate group (recitals 38 to 40). Furthermore, during the fact-finding stage of the investigation concerned, it cannot be considered acceptable that an interested party only provides the information it itself considers necessary or lays down conditions for supplying such information.

(68) For the abovementioned exporters (recitals 63 to 67) and for those exporters who 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 provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88.

(69) In this connection the Commission considered that the results of its investigation provided the most appropriate basis for determination of the margin of dumping and that it would create an opportunity for circumvention of the duty and would constitute a bonus for non-cooperation to hold that the dumping margin for these exporters was any lower than the highest dumping margin determined with regard to an exporter who had cooperated in the investigation. For these reasons it is considered appropriate to use this latter dumping margin for this group of exporters.

G. COMMUNITY INDUSTRY

(70) The Community industry of CDPs represented by Compact consists of three companies — Philips, Grundig and Bang and Olufsen — Philips being by far the most important in terms of volume of production and market share in all Member States of the Community. These three producers represent more than 90 % of the total Community production of CDPs.

(71) Philips has a 50 % share-holding in Marantz in Japan, the remaining 50 % being held by several Japanese companies. Marantz is one of Philips' share-holdings around the world. No indication

was found that the existence of Marantz had any substantial influence on the general industrial and commercial behaviour of Philips.

(72) Philips and Grundig imported CDPs from Japan during the investigation period. Philips imported from Marantz and Grundig from Sanyo and Toshiba. The quantities imported by Philips are around 2 % of Philips total sales in the Community during the investigation period. Grundig imported during the same period on OEM basis approximately one-quarter of its total sales in the Community. In deciding whether to exclude a Community producer from the Community industry, the Commission took into account whether the importation of the dumped product and its sale on the Community market should, due to the volume of imports, the reasons behind the importation or any other circumstances, be considered as a normal and sound business practice. In this respect the Commission considered that, in view of Philips very low volume of imports, it did not benefit unduly from Marantz dumping, which in any case was found to be very low. As far as Grundig is concerned, it imported Japanese CDPs on OEM basis exclusively or primarily in order to fill gaps in the company's own product ranges and thus to complete the range of products for distribution. By including a number of Japanese models in its own range of products, this Community manufacturer wanted to protect its position in the CDP market as well as in the total audio market. Although it was technically and commercially able to produce and distribute all models of CDPs, it was constrained to import these models from Japan by the pressure of Japanese and Korean imports on the profitability of its own production. Thus, these imports can be considered as a means of self-protection.

(73) Accordingly, the Commission concluded that Philips and Grundig should not be excluded from the present proceeding and that all three Community producers form the 'Community industry' within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

H. INJURY

(a) Evolution of the Community market

(74) The size of the Community market has increased very rapidly. From an index 100 in 1984, it increased to 344 in 1985, 1 145 in 1986 and an estimated 1 982 in 1987. The German market represents almost 30 % of the total Community market and the German, French and United Kingdom markets together represent around 70 % of the total Community market.

(b) Volume and market shares of dumped imports from Japan and Korea

(i) *Volume and market shares of dumped imports from Japan*

(75) The volume of CDPs imported from Japan was 97 924 units in 1984, 528 912 units in 1985, 1 546 305 units in 1986 and 2 289 912 units in 1987. For the investigation period (May 1986 to June 1987) this volume was 1 727 670 units.

(76) When the Japanese producers started exporting CDPs to the Community in 1984, assuming that all imports by related importers were resold, they achieved a less than 50 % share of the Community market. In 1985 this reached around 64 % and in 1987 it reached around 70 % of the total Community market.

(ii) *Volume and market shares of dumped imports from Korea*

(77) The volume of CDPs imported from Korea was 12 units in 1984, 1 526 units in 1985, 33 321 units in 1986, 141 882 units in 1987 and 63 964 for the first three months of 1988 compared with 36 737 for the first three months of 1987. For the investigation period this volume was 89 478 units.

(78) When the Korean producers started exporting CDPs to the Community in 1985, assuming that all imports by related importers were resold, they achieved a share of less than 1 % of the Community market. In 1986 this share increased to almost 2 % and in 1987 it increased to almost 5 % of the total Community market.

(79) Although the Korean market share, as can be seen above, has not reached significantly high levels compared with the Japanese, it has to be taken into consideration that imports to the Community really only started in 1985 and then on a small scale. However, as the above figures indicate, Korean imports are increasing at a very rapid rate.

(iii) *Market share of total dumped imports from both Japan and Korea*

(80) The market share of all exporters concerned was less than 50 % in 1984, around 65 % in 1985 and around 75 % in 1987.

(c) Volumes and market shares of Community industry

(81) The number of CDPs produced in the Community increased from an index 100 in 1984 to an index 713 in 1986 and decreased in 1987 to an index 507,7. This increase is by far inferior to the market size increase (see recital 74)

(82) On the basis of quantities sold it was estimated that market share dropped from more than 50 % in 1984 to less than one-third in 1985. In 1986 market share increased slightly compared with 1985. In 1987 a substantial fall brought the market share of the Community industry to less than 18 % of the Community market.

(d) **Prices**

(i) *Global market price evolution*

(83) Following the launch of CDPs by a very limited number of manufacturers, prices fell rapidly as production expanded and new producers entered the market. Prices quickly bottomed out to a level barely above costs for basic models and competition switched to focus on more advanced features and styling. At the bottom end of the market, numerous low-cost producers compete to a very large extent on price alone, with products of comparatively standard technology and not significant differences in features and quality.

(ii) *Prices of dumped imports and global price levels*

(84) A good approximation of the relative evolution of prices of Community and imported models was provided by a global comparison of average market price evolution to average Philips market prices because of the very high market share of the imported CDPs and the predominance on the Community side of Philips production. This comparison was based on available data from independent market surveys for the German, French, United Kingdom and Dutch markets.

(85) The Commission found that the Community industry is more present on the mass market than on the high end market. No major change of this global position was observed during the period concerned. Consequently, the average Community industry's unit price is in general lower than the average market unit price.

(86) In April/May 1986 the prices of the Japanese models decreased more rapidly than the average price of Community models and as a result the abovementioned difference in price levels decreased substantially. The Community industry reacted to this but only partly managed to restore the price difference which existed in 1985 and the beginning of 1986.

(87) In order to establish whether the decrease in prices of the Japanese imports arose from general industrial trends, the Commission also compared the average price of CDPs in Japan to the average export price of Japanese CDPs. During 1986, when the Community CDP market experienced on average a very strong downwards trend, the Japanese domestic CDP market was in a period of remarkable stability and even had a slight increase in prices.

(iii) *Price undercutting*

(88) For the assessment of the price undercutting the Commission compared the prices of the Community producers with those of the exporters involved in the proceeding in the three major Community markets, the United Kingdom, Germany and France, which together represent more than 70 % in volume terms of the Community market and more than 75 % of the exports concerned.

(89) The Commission has examined exporters' and Community producers' pricing at two levels : for the exporters who did not cooperate in the proceeding, end-user prices were utilized from independent and representative market surveys ; for the exporters who cooperated and for the Community producers, the prices to the trade (i.e. distributors or dealers) were used, on the basis of replies to questionnaires.

(90) There is a great variety of models on the market and therefore there are no identical models to compare. In order to make a comparison, the Commission selected the four most sold Community models which represent more than 60 % of total sales of Community producers in the three abovementioned markets of the Community.

(91) For the comparison the Commission chose imported models with the same basic functions, features and specifications as they are perceived by the consumer. The Commission then established the list of imported models which were similar enough to be considered directly competitive models to each of the Community models selected. No adjustments for physical differences were thus necessary.

(92) The Commission was assisted in this by an independent expert chosen in agreement with the exporters and the Community producers in this proceeding. As the number of different imported models was much greater than that of Community production the expert's study resulted in a list of several imported models being comparable to each model produced by the Community industry.

(93) 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 net selling prices for each model and for the different sales channels, i.e. sales to OEMs, sales to dealers by the related importers, direct sales to independent distributors.

(94) The Commission established 76 comparisons on the German market for the four Community models. Of these, 62 showed that the Japanese and South Korean models were sold at prices from 1 to 53 % lower than the prices of the comparable Community models. On the United Kingdom market of 66 comparisons, 17 showed imported model prices to be from 2 to 22 % lower than the prices of the comparable Community models. On the French market of 51 comparisons, 29 showed imported model prices to be from 3 to 47 % lower than the prices of the comparable Community models.

(95) Evidence available to the Commission showed that there is also serious price undercutting of CDP prices from some Japanese exporters/producers who had not cooperated in the proceeding. For those exporters/producers evidence could only be based on market surveys as they have not replied to the Commission's questionnaire.

(iv) *Price underselling*

(96) Since the price realized by the Community producers had been depressed by the prices of the Japanese and South Korean products (recitals 84 to 87), the Commission considered it appropriate to establish the amount of underselling. For this, the sales price of imported CDPs was in each case set against a target sales price of the Community product; this target sales price consisted of each Community producer's cost of production per model, including selling, administrative and other general expenses, and a return on sales which was tentatively set at a level of 10 % (see recital 145 below). The target price was calculated for each company and for each Member State, on the basis of its costs there.

(97) On this basis the Commission found that, of the 76 comparisons on the German market, 74 showed that Japanese and South Korean models were sold at prices from 3 to 64 % lower than the target price of the comparable Community models. On the United Kingdom market all 66 comparisons showed that the imported models were sold at prices from 5 to 49 % lower than the target price of the comparable Community models. On the French market 63 out of the 66 comparisons showed that the imported models were sold at prices from 10 to 65 % lower than the target price of the comparable Community models.

(e) **Other relevant economic factors**

(i) *Production capacity, utilization and stocks*

(98) The Commission found that the actual production capacity rose from an index 100 in 1983 to an index 1 000 in 1987 with a capacity utilization rate which decreased by approximately 25 % from 1983 to 1987.

(99) From recitals 74 and 81 to 82 above, it is apparent that, while the market had increased in volume, the Community producers suffered a substantial loss in their market share which led, particularly by the end of 1986, to an accumulation of high stocks from an index 75 in 1984 to an index 1 700 in 1985 and 1 225 in 1986. Consequently Community producers did not increase production capacity for 1987. Nevertheless capacity utilization decreased from more than 50 % in 1986 to less than 40 % in 1987. The increase of exports from an index of 100 in 1984 to an index 756 in 1987 did not succeed in reversing the decrease in the capacity utilization rate.

(ii) *Profitability*

(100) The Commission found that return on sales of the Community industry were negative in the initial stage of production in 1983, 1984 and 1985. At the beginning of 1986 positive returns were achieved. However, in April/May 1986 stocks increased, prices fell below cost of production and losses appeared again. These losses during the reference period were approximately 30 % of turnover. Only a very small portion of the Community industry, specialized in high segments of the market, managed to maintain positive financial results.

(iii) *Employment*

(101) As far as employment in the Community industry is concerned, about 7 000 personnel are employed in CDP development, production and sales. Because of the considerable losses incurred by the Community industry, this employment is under threat.

(f) *Conclusions*

(102) The Community producers suffered severe market share losses in a rapidly growing market. This loss of market share has also meant that the Community producers reached lower production volume and thus have been unable to fully benefit from economies of scale. Their prices were undercut and extensive underselling was observed, at least for the most widely sold models. Their sales at depressed prices, often at a level below cost of production, resulted in increased financial losses. Their total production capacity and employment increased up to 1987 but was less than the market growth. The continuous losses constitute a threat to the future of the industry in the Community.

(103) On the basis of its provisional findings, the Commissaion concluded that the Community CDP industry has experienced extensive material injury.

I. CAUSATION OF INJURY BY DUMPED IMPORTS

(a) Cumulation

(104) Several exporters claimed that individually they did not cause material injury because of their very low individual market share. The Commission, however, considers that dumped imports which, loked at in isolation, did not cause material injury, would fall outside any anti-dumping proceeding while their cumulative effect might well have considerable injurious effects. The Commission, therefore, consistent with previous practice and in accordance with the objectives of Regulation (EEC) No 2423/88, considers that the overall effect of imports on the Community industry should be assessed on a cumulative basis.

(105) Furthermore, the Commission considered that the effects of Korean and Japanese imports had also to be analysed cumulatively. Altough the Korean producers offered a limited range of CDPs concentrated in the lower segment of the market, the injurious effect of the Korean and Japanese imports cannot be separated because they were marketed in the Community within the same time period and the Korean models competed with similar models imported from Japan and other countries and models produced in the Community.

(b) Effect of dumped imports on prices, market shares and profitability

(106) In order to establish causality, the Commission examined whether there was coincidence in time between the increase in dumped imports and the loss of market share and profitability of Community producers.

(i) *Dumped prices and market shares*

(107) As explained under recital 83 above, at the bottom end of the market (mass market) low-cost models compete almost on price alone. On this market, the Community CDPs have suffered severe price undercutting and underselling by dumped imports (recitals 88 to 97 above). In its efforts to maintain market shares, the Community industry also lowered its prices (recital 86). Despite such decreases it suffered severe losses of market shares (recitals 75 to 82 above).

(108) The Commission found that, in the higher segments of the market, competition switches more and more towards non-price elements, mainly brand name, features and styling. The attractiveness, for the consumer, of a model is based essentially on his evaluation of price/brand/features, in whichever order. A drastic price decrease for a specific model can still profoundly alter its attractiveness compared with another directly competitive model. Thus, the defence of market shares of Community industry against dumped imports was not limited to those imported models which were directly undercutting, but was extended to react against any element altering the price/brand/features equilibrium on which the market share is normally established, including significant price decreases.

(109) As a consequence of this, the Commission came to the conclusion that not only price undercutting but also a general lowering of prices of directly competing models in the investigation period forced down the prices of the Community producers.

(ii) *Effect of dumped imports on profitability*

(110) The Commission found that the Community producers, confronted with the dumped prices of Korean and Japanese exporters, were thus forced, in order to defend market shares, to reduce their prices in most cases to levels below their costs of production. As a result of such price decreases and loss of market shares, high financial losses have occured for the major part of Community production of CDPs.

(c) **Arguments presented by Japanese and Korean exporters**

(i) *Self-inflicted injury*

(111) Japanese exporters claimed that the Community industry appears to have ignored the fact that it is a natural tendency for the market shares of those companies, who were first in the market to fall, and to have implemented an increase in production capacity that matched market growth. It was claimed that, as a result of this overcapacity, the Community industry sold higher quantities at lower prices in a vain attempt to reverse the natural tendency of its market share to fall. This, according to the Japanese exporters, shows a profound misunderstanding of the nature of normally competitive markets and suggests that injury is entirely self-inflicted by bad production and marketing decisions.

(112) In order to assess the pertinence of these arguments the Commission investigated whether the Community industry was too late in adapting to the market requirements. The evaluation of the production planning, production capacity, volumes produced and profitability can only cover the period from the start of production of CDPs in the Community until April/May 1986, when dumping started and subsequently distorted the market situation. Such an evaluation does not indicate any major error in the strategy of the Community producers.

(113) The Community industry claimed that after this period it had to face loss of market share in favour of dumped imports which meant corresponding loss of economies of scale which, in the consumer electronics industry, are very high.

(114) As to the alleged superior marketing and production planning of the Japanese exporters, no evidence was either submitted to the Commission or discovered by it to support this allegation.

(ii) *Lack of relationship between prices and market shares*

(115) Japanese exporters argued that there is a lack of any direct relationship between prices and market share and, consequently, even if dumping were found this could not explain the loss of market shares by the Community industry. To illustrate this they provided evidence of the absence of any link between the prices of some specific models and/or brands and the market shares of such models and/or brands. They argued that the absence of such a link should be central to the Commission's assessment of the causation of injury by dumped imports.

(116) The Commission considers that these arguments evidently confuse different issues. A direct comparison of a given expensive model with a cheap model and their respective market shares does not allow a general conclusion on the link between market share and the relative evolution of prices of competitive models to be drawn. Indeed, the fact that a very cheap model can fail to gain any significant market share or that an expensive model can succeed in gaining important market shares is irrelevant to the question of whether a price decrease of a specific model can improve its market share in relation to that of the directly competitive models. Only the absence of such a relative improvement in market shares would prove the claim. No evidence has been provided in this respect.

(iii) *Increased Japanese import prices*

(117) Several Japanese exporters claimed that in early 1987 they increased their export prices to the Community and that the Community producers did not follow this increase. According to these exporters, this mere fact is sufficient to prove that it was the strategy of the Community industry to constantly undercut prices. Evidence available to the Commission shows that several Japanese producers/exporters did indeed increase the level of their export prices to the Community in early 1987, but mainly by introducing new models with different combinations of features. Such increases were not sufficient to eradicate the general price suppression. Furthermore, the effects of these price increases at retailer/consumer level were deferred because of the high stocks of old models held by traders which were sold to consumers at low prices for several months after the introduction of new models at increased prices. In many cases Community producers found it difficult, if not impossible, to negotiate even minimal price increases with their principal customers mainly because almost every single one of their models was undercut by one or more imported models similar enough to be considered in direct competition with the Community model concerned.

(d) **Other factors and conclusions**

(118) In assessing whether the material injury suffered by the Community industry has been caused through the effects of dumping in the sense of Article 4 (1) of Regulation (EEC) No 2423/88, the Commission found that the price depression was induced by the

lowering of prices of dumped imports and that the loss of market share, the smaller increase or even decrease of volumes produced, the fall of market prices below cost of production and the loss of or reduced profitability by the Community industry coincided with the increase of the volume of the dumped imports of CDPs from Japan and Korea.

(119) Also, other indications, such as capacity utilization, cost of production and stock figures, on the basis of weighted averages and in relation to total consumption, show that these were significantly better for the Community industry in 1984 and 1985 than in 1986 where dumping was found.

(120) The Commission did not find any other factors which could explain the injury suffered by the Community industry. All these elements led the Commission to determine that the effects of dumped imports of CDPs originating in Japan and Korea, taken in isolation, have to be considered as causing material injury to the Community industry.

J. COMMUNITY INTEREST

(a) General considerations

(121) The purpose of anti-dumping duties is to eliminate dumping which is causing injury to the Community industry and thus re-establish a situation of open and fair competition on the Community market which is fundamentally in the general Community interest.

(122) While the Commission recognizes that the imposition of anti-dumping duties will affect price levels of the exporters concerned and consequently may have some influence on the relative competitiveness of their products, it does not expect competition amongst companies selling CDPs on the Community market to be substantially reduced. The exporters concerned will still be in a position to sell competitively on the market and the availability of a wide choice of product will be maintained. The only effect on competition among producers will be the removal of the unfair advantages gained by the dumping practices.

(123) The Commission has also considered the effects of anti-dumping duties on CDP imports from Japan and South Korea in relation to the specific interests of the Community industry and other interested parties including consumers.

(b) Interests of Community industry

(124) In assessing the interests of the Community producers, the Commission considered that, because of the considerable losses suffered by the Community producers, the continued existence of this industry is at stake.

(125) The disappearance of Community CDP production could also influence the Community's production of other consumer electronics products. Indeed, the technologies for CDPs and a whole range of other products are closely related. The loss of technological know-how and advances in the CDP area will mean the loss of a global competitive edge.

(126) The abandoning of CDP production by the complainant industry would lead to the loss of several thousand jobs in the industry itself, among its suppliers and in related industries (recital 101 above).

(127) Exporters and importers claimed that it could be difficult for the Community industry to satisfy the expanding demand as the supply from Japanese manufacturers might decrease. Even for the Community CDP industry itself the short term advantage of an AD duty might be balanced by long term damage, if the Community industry does not remain competitive on a world-wide basis.

(128) The Commission does not expect quantities exported by Japanese and South Korean producers to diminish to any significant extent. The Community market for CDPs is by no means saturated and is expected to continue to expand. Duties will not prevent Japanese and South Korean exporters also benefiting from this expansion.

(129) Evidence available to the Commission shows that the Community industry has the ability to respond to an eventual increase in demand arising from the re-establishment of normal competitive conditions.

(130) Furthermore, the Commission cannot follow the argument that protection against dumped imports can influence negatively the Community industry's competitiveness on a world-wide basis. Japanese and Korean exporters will no longer be able to benefit from their dumping. This should allow the Community industry to regain market share, to benefit from economies of scale and thus become more competitive.

(c) **Interests of other parties**

(131) It has been argued that the imposition of duties would cause price increases, reduce the choice of the consumer and harm other Community industries and activities such as producers of CDs, musicians and performers and other artists whose future income may depend on the penetration of CDPs.

(i) *Interests of Community consumers*

(132) As far as consumer choice is concerned the Commission does not expect any significant negative effects (see recital 123 above). In 1985 there were about 70 CDP models in the Community market; by 1987 this had increased to over 250 models and the Commission expects this trend to continue.

(133) As to the increase in prices, in the Commission's view the possible short term disadvantage to consumers with respect to the higher prices of CDPs 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.

(134) Community consumers cannot expect to continue to benefit from price advantages resulting from unfair competition. Furthermore, there is no guarantee for consumers that they will continue to benefit from dumped prices. Long term consumer interest is served by the preservation of competition between Community and third country producers.

(135) The preservation, under normal competitive conditions, of a Community production of CDPs safeguards the Community consumer against any possible concerted action which may be undertaken by foreign producers dominant on the Community market.

(136) The practical elimination of Community production which may occur were measures not to be taken as a result of this proceeding constitute the major threat to Community consumer interest.

(ii) *Other parties*

(137) As far as concerns other Community industries and activities mentioned under recital 131 above, no significant negative effects are to be anticipated as the duties are not expected to impede the continued expansion of the Community market for CDPs (recitals 128).

(b) **Conclusions**

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

K. DUTY

(139) When calculating the amount of duty adequate to remove the injury, the Commission had to consider that even under the present circumstances the Community industry as a whole is not profitable. The Community producers have been suffering severe losses and only a small portion of the Community production is profitable or reaches break-even point.

(140) As far as the elimination of losses is concerned, the Commission considers that the duty should cover the difference between the selling prices of Community producers and their total cost of production.

(141) As far as the return on the sales of CDPs 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.

(142) 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 need for investment and research and development in this particular area, a return on sales of 10 % can tentatively, for the purposes of the preliminary determination, be regarded as an appropriate minimum.

(143) The Commission then established for each model of CDP imported into the Community and, with the assistance of the expert mentioned in recital 92 above and on the basis of the same criteria mentioned in recital 91, the most similar model produced by the Community industry and with which it was considered to be in direct competition.

(144) The Commission then calculated for the complainant Community industry, and on a model by model basis, the increases in prices which would be required to enable them to cover their total cost and earn a 10 % profit before tax.

(145) In order to allow the Community industry to proceed to these necessary price increases to remove the injury, the prices of the directly competitive models have also to increase by the same amount. All significant models of each exporter were thus allocated an amount of the necessary increase to remove the injury suffered by the most directly competitive Community-produced models. Where the imported model concerned was considered comparable to more than one Community model, the necessary increase for each Community model was weighted by the quantities sold of the Community models concerned. Subsequently, the increases for each model of each exporter/producer were weighted by the quantities imported for each model and an individual average percentage of price increase necessary to remove injury was thus calculated by individual exporter/producer. This calculation made no allowance for a possible increase in sales by the Community producers.

(146) It was considered appropriate at this provisional stage, and in view of the further verification needed of the information submitted by the Community industry concerning its sales during the investigation period, to limit these calculations to all OEM sales and to the brand sales on the German market which represents approximately 30 % of the total Community market.

(147) The average selling price of all sales of each exporter at the different levels of trade were related to the cif value of the goods when imported. It was found that the selling price expressed as a percentage of the cif value to the first independent buyer within the Community was on average 143,67 % for the Korean exporters and 135,85 % for the Japanese exporters.

(148) In order to establish the rate of duty to be imposed provisionally, the Commission had to express the price increase factor referred to in recital 145 as a percentage of the cif value of the imports of CDPs from Korea and from Japan. The result of this calculation gave an increase ranging form 0,75 to 68,23 % depending on the exporter/producer concerned, which is the increase of the Community frontier price necessary to remove the injury.

(149) Accordingly, the amount of provisional duty to be imposed should be the percentage established as explained in recital 148 above for the exports of all companies for whom a dumping margin equal to or higher than this percentage had been found. For the remaining companies the provisional anti-dumping duty should equal the dumping margin established.

(150) For Lux Corporation, Tokyo, Alpine Electronics Inc., Tokyo and Marantz Japan Inc., Tokyo, the amount of duty thus established was *de minimis* and thus does not justify the adoption of protective measures.

(151) For those companies which neither replied to the Commission questionnaire nor otherwise made themselves known or refused full access to information deemed to be necessary by the Commission for its verificaton of the company's records, the Commission considers it appropriate to impose the highest duty calculated, i.e. 33,9 % for products originating in Japan and 32,5 % for products originating in Korea. Indeed, it would constitute a bonus for non-cooperation to hold that the duties for these producers/exporters were any lower than the hightest anti-dumping duty determined.

(152) The provisional duty to be imposed should apply to all CDPs from Japan and Korea.

(153) A period should be fixed within which the parties concernd 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 compact disc players falling within Taric code ex 8519 99 10 10 (1), i.e. stand-alone sound reproducers with a laser optical reading system and with external dimensions of at least 216 × 45 × 150 mm, equipped to accommodate up to a maximum of 10 compact discs, including sound reproducers which may be incorporated in a 'rack' system but can nevertheless operate alone separately from the 'rack' system with their own power supply and commands, functioning with AC mains supply of usually 110/120/220/240V and not capable of operating with a power supply of DC 12 V or less, originating in Japan and in the Republic of Korea.

(1) The Taric codes shown are those applicable on the date of entry into force of the present Regulation.

2. The rate of duty shall be 33,9 % for products originating in Japan (Taric additional code : 8279) and 32,5 % for products originating in Korea (Taric additional code : 8285) of the net free-at-Community-frontier price before duty with the exception of imports of the products specified in paragraph 1 of this Article which are produced or exported by the following companies, the rates of duty applicable to which are set out below :

	Rate of duty (%)	Taric additional code
Japan		
Nippon Columbia Co. Ltd (Denon), Tokyo	17,5	8267
Funai Electric Trading Co. Ltd, Osaka	8,4	8268
Kenwood Corporation, Tokyo	19,3	8269
Matsushita Electric Industrial Co. Ltd, Osaka	33,9	8270
Onkyo Corporation, Osaka	8,5	8271
Pioneer Electronic Corporation, Tokyo	28,8	8272
Sanyo Electric Co. Ltd, Osaka	27,8	8273
Sony Corporation, Tokyo	15,9	8274
Teac Corporation, Tokyo	6,4	8275
Victor Company of Japan (JVC), Tokio	20,9	8276
Yamaha Corporation, Hamamatsu	23,7	8277
Corée		
Inkel Corp. Ltd, Seoul	20,1	8281
Goldstar Co. Ltd, Seoul	32,5	8282
Samsung Electronics Co. Ltd, Seoul	23,0	8283
Haitai Electronics Co. Ltd, Seoul	21,3	8284

of the net free-at-Community-frontier price before duty. In cases where the exporting company is not the same as the producing company the rate applicable to the producing company shall apply.

3. The duty shall not apply to imports of the products specified in paragraph 1 of this Article manufactured by Lux Corporation Tokyo, Alpine Electronics Inc., Tokyo and Marantz Japan Inc., Tokyo (Taric additional code : 8278).

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

5. 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, 12 July 1989.

For the Commission

Frans ANDRIESSEN

Vice-President