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(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 3232/89

of 24 October 1989

imposing a provisional anti-dumping duty on imports of small screen colour television receivers originating in the Republic of Korea

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Whereas :

A. Procedure

(1) In February 1988 the Commission 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 small screen colour television receivers (hereafter referred to as SCTVs) originating in the Republic of Korea and commenced an investigation. The product investigated corresponds to CN code 8528 10 71, according to which classification the maximum diagonal screen size taken into account for the purposes of the proceeding is 42 cm.

The proceeding was initiated as a result of a complaint lodged by the European Association of Consumer Electronic Manufacturers (EACEM) on behalf of producers whose collective output was stated to constitute a major proportion of Community production of SCTVs. The complaint contained evidence of dumping of this product originating in the Republic of Korea and of material injury resulting therefrom, which was considered sufficient to justify opening a proceeding.

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

All the known exporters, some importers, and the majority of Community producers represented by the complainant made their views known in writing. Submissions were also made by an organization representing Community purchasers of the product.

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

(a) *Community producers :*

- Grundig AG, Fürth, Federal Republic of Germany,
- Mivar srl, Milano, Italy,
- Nokia-Graetz, Pforzheim, Federal Republic of Germany,
- Philips International BV, Eindhoven, Netherlands,
- Philips SpA, Monza, Italy,
- Thomson Consumer Electronics, Paris, France,
- Séleco SpA, Pordenone, Italy ;

(b) *Korean producers/exporters :*

- Daewoo Corporation/Daewoo Electronics Co. Ltd, Seoul & Gumi, Republic of Korea,
- Goldstar Co. Ltd, Seoul & Gumi, Republic of Korea,
- Samsung Electronics Co. Ltd, Seoul & Suwon, Republic of Korea ;

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 44, 17. 2. 1988, p. 2.

(c) *Importers in the Community:*

— Amfo Electronics, Antwerpen, Belgium,

— Amfo Electronics, Rotterdam, the Netherlands,

— Daewoo France sàrl, Paris, France,

— Daewoo Handels GmbH, Frankfurt, Federal Republic of Germany,

— Goldstar Deutschland GmbH, Ratingen, Federal Republic of Germany,

— Goldstar UK Sales Ltd, Slough, United Kingdom,

— Quelle Internationales Großversandhaus, Fürth, Federal Republic of Germany,

— Samsung Electronics (UK) Ltd, Surbiton, United Kingdom,

— Samsung Electronics GmbH, Steinbach, Federal Republic of Germany.

(4) The Commission requested and received detailed written and oral submissions from the Community producers represented by the complainant, from the exporters named, and from a number of importers, and verified the information provided to the extent considered necessary. Certain importers did not provide elements of accounting information requested and in one case did not place adequate time at the Commission's disposal for verification of given expense items that had been identified in the course of the investigation.

(5) The investigation of dumping covered the calendar year 1987 (the reference period).

(6) This investigation has exceeded the normal time period because of the volume and complexity of the data initially gathered and examined, and because the completion of the investigation has required the study of related issues which arose during the proceeding and which could not have been foreseen at its outset.

B. Product under consideration

(i) *Definition of product*

(7) The products concerned by the proceeding are colour television receivers, with an integral picture tube, that have a diagonal screen measurement of not more than 42 centimetres (or 16 inches). Their principal components are: a housing (normally of plastic material although wood may also be used), a control unit, a power supply unit, a tuner for receiving broadcast television signals, a series of circuits for converting received signals into audio and video output, a sound assembly including loudspeakers and a cathode ray tube (also commonly referred to as colour picture tube or CPT) with deflection yoke in which the electronic video output signals are converted into images on the screen. This last is by far the largest and most costly item in the assembly of a complete television receiver.

(ii) *Like product*

(8) The Commission found that the SCTVs produced in the Community use the same basic technology as those sold in and exported from Korea and are alike in their essential physical and technical characteristics.

Colour television receivers in general are marketed with a wide range of technical features. In the particular case of the SCTV sector, however, the determining features tend to be more restricted in number, since the normal household use in the Community of this product as a 'second set' implies that the majority of such sets sold need to satisfy less sophisticated technical requirements than those of the more highly featured, larger screen, 'first set' or 'family television'.

In comparing Community and Korean produced models sold on the Community market, and in comparing Korean export models with those sold on the Korean domestic market, where the distinction between the small screen and family television sectors is less clearly established than in the Community, the Commission took account notably of the following features, which it found, on the basis of submissions presented, to be important in consumers' perceptions of the product:

(a) screen size;

(b) presentation — assymetrical or symmetrical ('monitor look'), use of glass plate over screen;

(c) tuning control system — remote control, number of pre-selections available;

(d) connections (video, audio, etc.) and sound output available.

In order to avoid possibly misleading results, the Commission did not compare with Korean exports

the higher range of SCTVs produced and sold in the Community, which include such features as flat square screens, teletext modules, and digital chassis. These models were excluded because their more innovative and enhanced technical characteristics were not normally shared by the Korean export models, at least during the reference period chosen.

(9) In the same way as video cassette recorders, which also contain a tuner for receiving television signals, colour television receivers have to comply with the different television standards operating in different countries. The three basic systems in use are NTSC (in the USA, Japan and the Far East), Secam (in France) and PAL (in Western Europe), all of which possess substandards which can vary from one country to another. Most colour television receivers are equipped with a tuning assembly adapted to one of the above (sub)standards, but some are equipped to accept television signals conforming to more than one of these standards, thus permitting broadcasts from more than one country to be received.

Although the adaptation of television receivers to these different standards or combinations of standards may give rise to price or cost differences between models, no party to the proceeding has claimed that such differences modify the basic technology employed, the consumer perception and usage of the product, or the considerations set out above concerning like product determination.

The Commission also considers that SCTVs which incorporate further elements within the housing of the television receiver, such as a radio broadcast receiver or a clock are covered by the present proceeding. The physical differences represented by these additional elements do not materially affect the definition of the product under consideration and the Commission is consequently unable to accept the argument that their presence constitutes a separate product.

C. Dumping

(i) *Normal value*

(10) Korean origin SCTVs were exported to the Community during the reference period either under the producers' own brand names, through wholly-owned subsidiaries or other importers, or on an OEM (original equipment manufacturer) basis. In the latter case the importer distributes (or sells to consumers through his own retail outlets) the product in the Community under his proprietary brand name. On the Korean domestic market all sales are made under producers' brand names, and no evidence of OEM type sales was presented or found. As a result of this situation, normal value was established respectively on the basis of Korean domestic prices and of constructed values, according to the type of export transaction in which the normal value was to be used for comparison purposes.

(11) Consequently, where comparison was to be made with the export prices of Korean producers' own brand SCTVs, normal value was established on the basis of the weighted average domestic prices of comparable models to independent customers. These domestic prices were taken into account net of all discounts and rebates actually granted, including deferred discounts, where these were found to be directly linked to the sales under consideration. Two of the producers operated a form of rebate to their customers (in general, retailers) which is paid when the SCTVs sold by them are resold by their customers on instalment terms to final customers. Since the condition on the basis of which the rebate is paid is that the retailer's sale be made on instalment terms, i.e. an event posterior to and independent of the producer's sale to the retailer, the Commission takes the position that such a rebate cannot be considered directly related to the sales under consideration, i.e. the producer's sales. The producers concerned have argued that the rebates are the subject of contracts between themselves and the retailers and are calculated on the producer's invoice value of the goods which are later sold by the retailer on instalments, the amount rebated being credited to the retailer's account in the producer's books. The Commission does not dispute these facts which it verified on spot. It was also argued that this rebate obviously affects the quantity of goods purchased by the retailer, but this would be equally true of other promotional expenses. The Commission considers therefore that the producers' arguments do not answer the specific issues which it has raised, and that for the purpose of provisional findings these rebates should be disallowed as deductions from domestic sales prices in establishing normal value.

(12) Domestic sales of models found to be comparable with those exported exceeded in all cases 5 % in volume of the export sales to the Community, which constitutes the threshold employed in previous cases by the Commission when determining whether domestic sales may be

considered sufficiently representative as a basis for normal value. Domestic sales of comparable models were found to be profitable, no substantial quantities having been found during the period of reference which were sold at prices not permitting the recovery of all costs reasonably allocated. Domestic sales of SCTVs in general, i.e. including all other models, were also found to be profitable in Korea. If all domestic sales in the normal course of trade are taken into account, excluding only loss-making models, their overall profitability varied for the Korean producers concerned between approximately 7 and 14 %.

(13) For the purposes of comparison with the export prices of the considerable quantities sold in the Community by the Koreans on an OEM basis, normal value had to be based on constructed value, as mentioned above in recital 10. However, OEM export SCTVs were generally made to somewhat different technical specifications from own brand exports and domestically sold models. Another problem of principle associated with constructed values in this context is the separation of the Korean exporters' accounting procedures used for export production from those used for domestic production, which renders the two sets of production figures non-comparable. This stems from the administrative requirements resulting from the Korean official system of reimbursement to manufacturers of duties originally paid by them on imported inputs when these are incorporated into goods which are later exported.

In order to take account of these problems, and to arrive at a constructed normal value which reflects adequately what the selling price of such models would be — if there had been OEM sales on the Korean domestic market — the Commission used as a basis the manufacturing costs of the domestic comparable models. These costs were then adjusted by the amounts corresponding to the significant physical differences between such models and the OEM export models. Selling, general and administrative costs were established on the basis of the costs incurred by domestic comparable models on the Korean market, and a reasonable margin of profit, evaluated at a level of 5 %, was added. These matters are discussed further in recitals 14, 15 and 31.

(14) While agreeing that OEM sales by a producer differ from sales of an own brand product, the Commission could not find or estimate any differences in costs or profits between the two types of sale, due to the total absence of OEM sales in Korea. In view of this situation, it was found reasonable to use a profit level of 5 % for all constructed values serving as the basis for OEM normal value.

This level of profit, which was in fact proposed by one Korean producer, was also considered appropriate in that it was lower than the overall profitability rates on domestic sales for all the three collaborating Korean producers, as described in recital 12 above. This lower level of profitability could therefore be held to offset any hypothetical differences in costs and profits between own brand domestic sales and the (non-existent) OEM sales in Korea for which constructed values were substituted.

(15) The two other Korean producers argued against the use of a 5 % profit margin on the grounds that it was too high. In one case it was claimed that a reasonable basis would be one half of the average profit level earned during the last three financial years on the company's domestic sales of all products. It was maintained that this would provide a more adequate recognition of the hypothetical cost/profit differences between OEM and own brand sales, since in a previous case the Commission had still used a 5 % profit margin for this type of constructed value when the overall domestic profitability of own brand sales of the same product was over 14 %, considerably higher than in the case of the company concerned here. The second producer claimed that a reasonable OEM profit rate would be equivalent to the overall profit rate earned by the company during the reference period. Like all the Korean producers, this was a multi-product company, and its overall profit rate was extremely small by comparison with its profitability on domestically sold SCTVs. The Commission did not accept these arguments. It considers that neither proposal constitutes a realistic basis for estimating a profit margin to impute to OEM type sales on the Korean market, and that a margin lower than that used by the Commission does not appear to be justified by the Korean producers' normal profitability on domestic models as mentioned above or by any other available information.

(16) One Korean producer showed that nearly 90 % of its exports to the Community were made on an OEM basis. After examining all the relevant circumstances, including those of the exports made on an own brand basis, the Commission concluded that the latter were not representative of the producer's normal operations. This minor share of exports was therefore disregarded in arriving at provisional findings, with the consequence that normal value for this producer was based exclusively on constructed values, in keeping with the producer's own proposal.

(ii) *Export price*

(17) Where Korean producers exported directly to independent customers in the Community, export prices were provisionally determined on the basis of the prices actually paid or payable for the SCTVs sold.

(18) Where exports were made to subsidiary companies which carried out a complete sales and marketing operation within the Community it was considered appropriate, in view of the relationship between exporter and importer, to construct export prices on the basis of the prices at which the SCTVs were first resold to an independent buyer. Discounts and rebates given in connection with these sales to independent customers were deducted from the prices. Suitable adjustment was made to take account of all costs incurred between importation and resale, including all duties and taxes, and a profit margin of 10 %, considered reasonable at this stage, for the SCTV sector, on the basis of the information available for independent importers.

(19) Where allocations of costs had to be made in constructing export prices that was normally done on the basis of turnover. The costs and turnover used for this purpose were those of the importer's last financial year, corresponding to the reference period 1987. On any occasion that an allocation of sales, administrative or other general expenses was not made on the basis of turnover, this was subject to the Commission receiving satisfactory proof, during the course of its on-spot investigation, that an alternative method would reflect more appropriately the incidence of the costs involved. The costs allocated included all administrative costs and other general costs, including advertising, whether financed by the exporter or by the related importer. All discounts and rebates, as mentioned in recital 18, were normally deducted with their actual value from each transaction concerned. Where this was not possible, an allocation of the cost involved was made on the basis of the sales turnover to which the cost was directly related.

(20) Certain of the exporters' subsidiary companies obtained reimbursement from their Korean headquarters for large sums spent in the Community on advertising and other expenses of a more general nature. In some cases this information was clearly available for the Commission's examination and shown in the company's official accounts. In other cases this information was not presented in the company's official submission, and its elements — which were present in the company's books — could only be established with some difficulty at the time of the on-spot investigation. The companies involved presented a series of arguments to justify the exclusion of these reimbursed expenses from the subsidiary companies' selling, general and administrative costs as determined for the purposes of constructing export prices. It was argued that the amounts involved had only been paid by the subsidiary companies in the first place as a matter of administrative convenience, and the expenses in question were in fact managed by headquarters in Korea. Some of the expenses were claimed to relate to activities, such as market prospecting and OEM sales, which were not part of the subsidiary's normal operations. As far as the advertising expenses and costs of commercial fairs were concerned, it was argued that these were either not related to SCTV sales, or were devoted to promoting the exporter's brand image with no particular reference either to the products sold by the Community subsidiary or to the national market within the Community where the expenses were incurred. The Commission considers however, in the light of the evidence available concerning the expenses incurred by the subsidiary companies and subsequently recharged to Korean headquarters, that these expenses refer to normal activities undertaken by the subsidiary companies during the reference period and should be taken into account as part of the subsidiaries' ordinary costs for the purposes of provisional determination, in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88.

(21) A very large proportion of the exports of one Korean exporter/producer were sold on an OEM basis to an independent importer which owns an extensive retail network in one of the Community national markets, as well as its own Far East purchasing offices — including one located in Seoul. This importer collaborated with the Commission's investigation, in providing confirmation of the invoice prices paid for its imports and

details of the resale prices it charged for SCTVs in the Community. In view of the level of the prices paid by the importer for its purchases of this product and the organizational structure of its operations, the Commission considered that further information was needed in order to verify fully the financial circumstances surrounding the transactions investigated. Despite repeated requests the importer failed to supply this information, without stating any reasons for its refusal. In view of this partial non-collaboration, and the significant proportion of the Korean export volume whose selling prices remain at least partially unsubstantiated as a result, the Commission will re-examine its provisional findings with regard to these exports before making a final determination.

(22) Another Korean exporter/producer declared a relatively large volume of exports, made on an own brand basis to an independent importer in the Community, which collaborated with the Commission's investigation. It was found when visiting the importer's premises that these exports were the object of an agreement between the exporter and the importer, which provided for the reimbursement of the importer's advertising expenses up to a maximum of a given percentage of the fob purchase price value of the imported products concerned. The Commission has extensively examined these payments to the importer, in the light of Article 2 (8), (9) and (10) of Regulation (EEC) No 2423/88. It has taken note of the arguments advanced by the exporter and importer concerned without however being convinced by them.

In view of the doubts attaching to the correct treatment to be applied to the export prices paid, and having been unable to obtain certain data required for its investigation, the Commission has decided to exclude these transactions from its provisional determinations. It will re-examine this question, and decide on the treatment to be adopted, before establishing its definitive findings.

(iii) *Comparison*

(23) For the purposes of a fair comparison between normal value and export prices, the Commission took account where appropriate of differences affecting price comparability, such as differences in physical characteristics, import charges and indirect taxes, and in terms of sales, where claims of a direct relationship between these differences and the sales under consideration could be satisfactorily demonstrated. All comparisons were made at ex-works level.

(24) In general, the matching of export with comparable domestically sold SCTV models was sufficiently close to limit the extent of the significant physical differences which had to be taken into account. The value of these differences was estimated on the basis of the respective production costs, since they were not normally to be found reflected in domestically sold models and domestic market price differences. The principal differences concerned:

— television broadcasting standard (PAL/Secam/NTSC),

— input/output connections,

— chassis assembly type and cabinet exterior,

— colour picture tube type,

— speakers,

— tuning system,

— power supply,

— other circuits (e.g. transmitter, antenna).

(25) The Korean producer/exporters presented claims for import charges and indirect taxes refunded on exportation of SCTVs to the Community. These claims were made in respect of the amounts actually reimbursed to the exporters by the Korean tax authorities for exports of this product, as already mentioned in recital 13. In this form the claims could not be accepted, since the refunds received reflect the import charges and indirect taxes incorporated in the SCTVs exported, while the Community legislation takes into consideration only those charges borne by the like product and by materials physically incorporated therein when destined for consumption in the country of origin. In fact Korean-made SCTVs destined for domestic consumption normally bear a lower proportion of import charges than that which is refunded on the exported product, on account of the higher proportion of Korean origin components incorporated in them.

The Commission therefore requested during the course of the investigation a comprehensive demonstration from each exporting company of the import charges incorporated in its domestically sold SCTVs, and based the allowance granted for the purposes of provisional determination on the information received.

(26) Adjustments were also made for differences in:

— commissions,

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

— payment terms,

— warranty expenses,

— salesmen's salaries and bonuses.

(27) Allowances for payment terms were claimed by all collaborating Korean producer/exporters on the basis of the average number of days credit granted to independent domestic customers multiplied by the average gross sales amount per day multiplied by the appropriate weighted average rate of interest payable. The elements of this calculation were verified by the Commission and the general principle found to be acceptable.

However, the gross sales amounts for domestic sales were found to include both the value added tax (VAT) and the considerable excise duties which are invoiced, in addition to the net sales price, to customers. This prompted two main comments — and adjustments to the companies' claims for credit finance — on the part of the Commission.

With regard to the financing of VAT invoiced to customers, the Commission did not consider the claim of a direct relationship with the sales in question to be established. The amount of VAT which has finally to be paid over to the tax authorities is determined by the balance between the VAT charged to the company on its supplies and the VAT which the company collects from its customers. In the balance of VAT to be financed there is no amount for SCTVs which is identifiable separately, and the Commission concluded that any financing cost involved is to be considered not as a selling but rather as a general, overhead, expense.

After careful examination the Commission concluded that the excise duties, including defence taxes, may be considered as directly related to the sales made on the domestic market, since the amounts of such taxes included in sales invoices to customers are in principle payable as such to the Korean authorities, normally by the end of the month following that in which the tax charge was invoiced. Not all of the companies had taken this legal payment delay into account when making their original claim, and where necessary the Commission made a correcting adjustment.

(28) Certain claims for salesmen's salaries included personnel not directly involved in selling activities, such as managers and secretaries. The claims were corrected on the basis of further information obtained by the Commission during its on-spot investigation.

(29) Promotional goods expenses were claimed by one producer/exporter, but this claim was not accepted on the grounds of the lack of a direct relationship between particular sales and such costs. No provision exists in Regulation (EEC) No 2423/88 for allowances to be made in respect of general promotional expenses, in which category these costs must be considered to fall.

(30) Exporters also claimed allowances for other general and overhead expenses, including selling, technical assistance and servicing overheads, and advertising. These costs could not be considered to be directly related to the sales in question, however, and no allowance was granted, in conformity with the provisions of Article 2 (9) and (10) of Regulation (EEC) No 2423/88.

(31) In addition to the allowances which were granted under the provisions mentioned immediately above, the exporters claimed that account should be taken of differences in conditions and terms of sale between normal value, constructed on the basis of domestic own-brand sales prices, and the prices for OEM exports with which they were compared. The basis for this claim was the exporters' argument that the latter were affected at a different level of trade from the former, being sold in much larger quantities and thereby needing lower selling costs than were required on the Korean market.

As mentioned in recitals 13 and 14, it was impossible for the Commission to verify this argument, because there were no domestic OEM sales in Korea, and the exporters could not show by how much the costs in question would theoretically have varied from those associated with the normal own-brand domestic sales, against whose prices appropriate allowances were made in respect of all justifiable directly related selling costs, within the terms of Article 2 (9) and (10) of Regulation (EEC) No 2423/88. No further allowance is foreseen under the provisions of this Article. However, notwithstanding the lack of quantifiable evidence as to the possible differences in either cost or profit levels associated with OEM sales, the Commission has taken account of both types of such hypothetical differences in its determination concerning the profit margin incorporated in the constructed normal values used for comparison with OEM export sales prices, as discussed in the earlier recitals mentioned above.

(iv) *Dumping margins*

(32) Normal values for domestically sold models of the three Korean producer/exporters were compared with the export prices of comparable models on a transaction-by-transaction basis. The preliminary examination of the facts shows the existence of dumping in respect of SCTVs originating in the Republic of Korea on the part of all three exporters investigated, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

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

— Daewoo Electronics Co. Ltd : 10,27 %,

— Goldstar Co. Ltd : 12,34 %,

— Samsung Electronics Co. Ltd : 13,06 %.

(33) For those exporters which did not make themselves known in the course of the investigation, dumping was determined on the basis of the facts available. It should be explained that some 18 % of Korean exports of SCTVs to the Community in 1987 (or 144 000 out of a total of 781 000 units appearing in the published statistics) were found not to emanate from the exporters collaborating with the Commission's investigation. This figure does not take account of possible transhipments to the Community via other third countries. One important exporter operating in Korea and supplying large quantities of SCTVs to the Community, which did not come forward during the proceeding, was in fact approached by the Commission during its on-spot investigations, with the assistance of the Electronics Industry Association of Korea, in order to secure the exporter's collaboration, which was nevertheless refused. The Commission considered that, in view of the gravity of this non-collaboration, which was underpinned by a corresponding failure to collaborate on the part of large Community importers (particularly in one Member State accounting for around 25 % of the total Community market) known to have purchased considerable quantities of SCTVs from the abovementioned exporter, neither the dumping margins determined for the collaborating Korean exporters nor the information contained in the complaint provided the most appropriate basis for determining the margin of dumping for the remaining exporters.

For this group of exporters the Commission decided to use, as the basis for determining export price, the average cif price for imports into the Community from Korea as shown by the Community Eurostat statistics for 1987. This price was modified to take account of the average of ocean freight, insurance, and the remaining adjustments made to the fob export prices of the collaborating Korean exporters. The resulting average substitute ex-factory export price was then compared with the average domestic Korean sales price of the collaborating exporters, adjusted by the average of certain allowances directly related to selling expenses in the Korean market. It was considered reasonable to use the result of this calculation, in which the average Korean substitute normal value exceeded the average export price by a margin of 19,65 %, as a basis for the finding of dumping in respect of the exporters in question, and in the opinion of the Commission the attribution to this category of any lower dumping margin would constitute an incentive for circumvention of the duty and a reward for non-cooperation.

D. *Community industry*

(34) In 1987, the reference period, the complainant Community producers which cooperated with the proceeding manufactured some 50 % of the total Community SCTV output. This volume clearly constitutes a major proportion of Community production, but two other factors also deserve to be mentioned in this connection. In the first place, the cooperating complainant companies still represented, as recently as 1985, some 68 % of total Community output. Second, the proportion of 50 % calculated in 1987 takes account of the rapid change in the composition of Community SCTV production capacity which took place between 1985 and 1987 — under pressure originating mainly from non-Community competition. Without this change, the cooperating producers would still have represented approximately the same share of Community output in 1987 as in 1985. The rapid reduction in the percentage between 1985 and 1987 can be explained by the higher proportion of non-Community, mainly Japanese, controlled production which has moved into the Community, as well as by the Community controlled production which has been relocated outside the Community, as described later.

(35) The Korean exporters have claimed that, since the United Kingdom consumer electronics manufacturers have not associated themselves with the complaint, data on production and sales in the United Kingdom market may not be used in the proceeding, either for the purpose of defining Community industry or for that of quantifying possible injury to that industry. It is the Commission's practice however to examine the facts available concerning the total Community market when defining Community industry and investigating injury, and the failure of certain producers to associate themselves with a complaint clearly does not prevent the Commission taking account of data relating to production and injury in a given

national market. The exporters' argument also neglects the significant shares in United Kingdom production and sales controlled by the companies participating in the complaint, who have made information available concerning this market. The exporters' claim has consequently not been accepted, and the findings published include data relating to the United Kingdom.

A Korean exporter has also cast doubt on the validity of a separate identifiable small screen sector within the general colour television industry and market. As already indicated by its remarks under the 'like product' heading in recital 8, the Commission found that this distinction did in fact correspond on the Community market to a series of important technical and marketing differences, and not only to a separate combined nomenclature code or an artificial classification made by the Community industry for the purpose of lodging its complaint. In collecting data on alleged injury the Commission therefore restricted its investigation to information concerning the small screen sector of the industry.

Within the SCTV sector the highest volume is taken up by 14" screen (37 cm) sets, followed by 16" (42 cm), and these are the most representative model sizes, although a number of other dimensions are to be found in smaller volumes.

E. Injury

(i) *Volume and market shares*

(36) Consumption in the small screen sector of the Community colour television market has grown rapidly — from approximately 4 million units in 1984 to 6,4 million units in 1987, a rise of 60 %.

(37) Over the same period Korean imports into the Community progressed, according to official Eurostat statistics, from some 23 000 units in 1984 to 781 000 in 1987. The precise assessment of these statistics is affected by certain technical problems, as is demonstrated by the fact that the exports to the Community declared by the three collaborating Korean producers and verified by the Commission for 1987 numbered only 637 000. These problems refer primarily to the question of non-collaboration already mentioned in recital 33. In spite of these considerations, the rapid penetration of the Community market by the Korean exporters is however evident — their market share of some 0,6 % in 1984 had risen to 12,3 % by 1987. Over the same period the Community industry's market share fell from 60,5 to 46,3 %, while if measured from 1985 — when the Community industry's share reached 69,4 % — the fall is even more spectacular.

The market share figures also require further commentary, since the Community industry's share had been fairly stable for several years up to 1985 at around or a little below 60 %. However there is no compelling reason why that level, as argued by the Korean exporters, should be taken as a 'normal' level for Community industry, rather than the 69 % attained in 1985. By that year the boom in SCTV consumption in the Community was confirmed, while penetration of the market by allegedly dumped imports had only just begun, so that the latter level may also be interpreted as that gained by the Community industry's rationalization efforts in the absence of unfairly priced imports. The pressure of the import influx is further illustrated by the inability of the Community industry to participate in the rapidly developing consumption in the SCTV market. Between 1985 and 1987 this market expanded by 42 %, but the sales volume of the Community companies progressed by around 1 % over the same period.

(ii) *Prices*

(38) A detailed investigation of SCTV pricing in the Community was made by reference to the sales prices of the models in this market sector sold by Ferguson, Grundig, Philips, Nokia Graetz (formerly Standard Elektrik Lorenz) and Thomson. These companies together represent about 86 % in sales volume of the complainants which were represented and which cooperated.

(39) In terms of price level erosion, it was found that the prices of all SCTV models of the above companies decreased between 1985 and 1987 by 12 % on a weighted average basis. Although it is considered normal for prices of consumer electronics items to fall over time, for reasons of increased volume and technical improvements in production (even where no exceptional competitive pressure is present), these factors tend to be very limited in the case of a product such as colour television, which is positioned now at a mature point on its current technology curve, and the rate of price depression mentioned above exceeds that which would have been expected under conditions of normal competition.

(40) After taking account of this price erosion over the period 1985 to 1987, the Commission investigated,

in addition, the price undercutting practised by the Korean exporters during the reference period, the 1987 calendar year. This was done in relation to the sales of the three collaborating Korean exporters in the four major Community markets, France, Federal Republic of Germany, Italy and the United Kingdom, where those exporters sold some 84 % of the SCTVs they exported to the Community.

The Commission first selected representative SCTV models marketed by the Community producers mentioned in recital 38. The models selected accounted for more than 50 % of those companies' sales. The Commission then selected representative Korean export models which were directly comparable with the Community producers' models, after having established a ranking of criteria based on an evaluation of consumers' priorities. The most important among these were screen size, feature type, and tuning control system. Care was taken to ensure that only those Korean models were selected which had at least the same or even more features than the Community models with which they were compared. The Korean models chosen represented more than 50 % of all Korean SCTV sales in the markets concerned.

The models so determined were compared on the basis of sales to the first independent customer in each of the various sales channels found — national distributor, dealer, and OEM. The average selling price of each Korean export model was thus compared in each of the Member States concerned with the corresponding figures for the appropriate Community producer models. Adjustments were made to ensure comparability in terms of the transport and any other expenses included in selling prices of Community models, when Korean models were priced fob Korean port. Similarly, adjustments were used to take account of differences in expenses and margins where comparisons could not be made directly within the same sales channel.

(41) The results of the comparison exercise outlined above showed price undercutting to have taken place on the part of all the Korean exporters whose models were investigated. This undercutting varied, according to exporter, up to a maximum of 39 %. On a weighted average basis, the results for the three exporters ranged from a minimum of 23 % to a maximum of 28 %.

It should be noted that the effects of the price cutting found do not refer only to the models of SCTV in the Community which may be considered to be directly comparable to the Korean exports, it applies to the whole range including the newest and most enhanced models. Undercutting at the lower priced end of the range — the major volume market segment — naturally has a depressive effect on prices throughout the whole SCTV range by reducing the consumer's perception of the value of the product and of the different features of the various models.

(iii) *Other relevant economic factors*

(42) As far as production volume and employment in the Community industry is concerned it is necessary to take account of the flexibility of basic SCTV assembly in terms of location, which stems from its relatively modest requirements in technology, fixed investment and the training of factory personnel. Although this is a fundamental characteristic of basic colour television production or assembly, the same description cannot be applied to colour picture tube production, or to the other activities essential to the long term economic viability of a vertically integrated and technologically progressive video products manufacturer: R&D, marketing, product design and engineering, etc. The flexibility of basic assembly processes, however, has made possible the progressive location of a not inconsiderable proportion of Community companies' SCTV production, particularly of basic models, outside the Community, mainly in South East Asia but also in other European countries.

This relocation was determined initially by the need to reduce costs — notably of components and labour — on the part of the Community producers, in response to normal competitive pressures. What is most apparent from the statistics, is the marked acceleration of this relocation taking place since the onset of unfair competition caused by the surge in dumped import penetration which began in 1985, as mentioned in recital 37. While in that year production of Community companies in extra-Community locations amounted to 16 % of their total production, this proportion had more than doubled by the end of 1987. This sharply increased production volume outside the Community was used by the Community companies to combat, with basic models, the new imports mainly on certain Member States' markets under particular attack, where price depression and company financial losses exceeded by far the already unfavourable Community average levels.

Naturally these developments had a disruptive effect on employment in the Community industry, where the number of those employed increased until 1986. This number fell in 1986/87 by 16 %, or more than 1 000 jobs.

(43) Capacity utilization in the Community industry was some 82 % in 1984, attained nearly 86 % in 1985, and then declined to 79 % in 1986 and 1987.

As far as stocks held by Community industry are concerned, while year-end stock levels of finished goods increased somewhat, as a proportion of production, in 1985 and 1986, in 1987 they returned to around the same level as in 1984.

These facts concerning capacity utilization and stock levels must be interpreted in the light of the industry's particular characteristics. The explanation for the way in which stocks have not built up as might have been expected, despite the combination of increasing production capacity and stagnant sales, lies partly with the mild adjustments in the rate of capacity utilization mentioned above, and partly with the price cutting policies adopted by Community industry to deal with low-priced competition. However, the basic reason for which capacity utilization and stock level data do not correspond in this case to those often conventionally associated with a damaged industry, is the flexible character of the television manufacturing process already mentioned in the proceeding recital. In general the industry's management will seek to adapt its capacity and output to its current market possibilities, and achieves this — albeit with considerable difficulties during the period of rapid import penetration taking place since 1985. Because of this, economic indicators such as that of capacity utilization and stock levels cannot be held to be really significant for injury determination in this case, since they do not clearly reflect the difficult market conditions, for which evidence must be sought in other parameters such as sales and output volumes, prices, employment, and profits. For the same reason Korean exporters' arguments which have sought, by concentrating on output and capacity utilization data in isolation from other factors, to prove that Community industry has suffered no material injury, cannot be accepted.

(44) The strong downwards pressure on prices of recent years — already described — has been the most fundamental factor affecting the profitability of the Community SCTV producers. Average industry returns on both sales and equity have been negative since 1984, and the negative tendency accelerated in 1985/86. In 1986 and 1987 the negative return on sales did not grow markedly worse, however, due to the firm action taken by the industry in the face of low-priced imports :

— despite falling market share, losses have been contained by introducing new low-end models with improved gross margins due to production rationalization and other cost reducing measures,

— in certain cases large market shares have been given up, with the objective of maintaining margins on the remaining higher-end business (low-end price pressure has been particularly acute in certain national markets, but less so in other Member States where quantitative restrictions exist),

— low-end losses were contained by the marketing of models manufactured by the Community companies in their production facilities in third countries, as mentioned in recital 42,

— the introduction of new more highly featured models, particularly with 15" flat square screens, gave some relief at the gross margin level.

(iv) *Conclusion*

(45) In its determination as to whether the Community industry is suffering material injury the Commission took account of the following facts :

— imports of Korean SCTVs have increased at an extremely rapid rate, from some 87 000 units in 1985 to nearly 800 000 units in 1987,

— the market share of these imports rose between 1985 and 1987 by over 10 % of Community consumption, while Community producers' share fell by 23 %,

— the complainant producers' selling prices in the Community suffered a significant erosion between 1985 and 1987. In addition, average undercutting by Korean exports in 1987 alone of 23 to 28 % (according to the exporter) has been found,

— Community producers were unable to increase their production and sales between 1985 and 1987, despite a rise in total consumption of 42 %, and the fact that their production capacity rose by 8 %,

— between 1985 and 1987 returns on both sales and equity of complainant producers deteriorated, the negative trend being mitigated by a series of marketing and rationalization measures,

— these rationalization measures involved a higher degree of production relocation to extra-Community facilities, and a loss of employment in the Community of some 16 % of the SCTV workforce in 1986/87.

(46) The abovementioned losses of market share, price erosion and undercutting, sectoral losses over several years, employment losses resulting from rationalization counter-measures, all lead the Commission to conclude, for the purpose of its provisional findings, that the Community SCTV industry has been suffering material injury within the terms of Article 4 (1) of Regulation (EEC) No 2423/88.

(47) Certain of the Korean exporters have argued that a determination of material injury to the Community SCTV industry is not justified because, in the first place the national association of consumer electronics manufacturers in the United Kingdom has not supported the complaint on account of a voluntary agreement with Korean industry, and in the second place three other Member States' markets enforce quantitative restrictions on Korean exports. These four national markets together constitute a majority proportion of Community SCTV consumption which enjoys a protection excluding the possibility of injury. In the Commission's opinion this argument is unconvincing on two counts. In the first place neither Community nor international law forbids the application of further trade measures — such as anti-dumping or customs duties — to imports which are subject to quantitative restrictions. The application of these further measures is of course conditional upon the normal requirements for their use being fulfilled : in the case of anti-dumping duties that the imports in question are dumped and cause material injury, in spite of the operation of the restrictions. Second, the Commission was able to establish significant injury relating to the national markets concerned on the basis of the data obtained during its investigation. This data included information concerning the sales and production of a major United Kingdom manufacturer, as mentioned in recital 35, as well as normal market data relating to Community producers' and exporters' selling prices. In addition, the Commission found that neither the voluntary restraint agreement nor the quantitative restrictions mentioned were in fact fully respected.

F. Threat of injury

(48) Furthermore, it is considered that a threat exists of increased injury from Korean exports in the future, in view of the extremely large production capacity available to Korean industry. This capacity is known to be completely out of proportion to the domestic market : in basic model colour picture tubes the capacity of 25 million tubes per year corresponds to one-third of world consumption. In addition, the Korean companies have now been installed for a number of years in the United States, whose large market is therefore no longer capable of absorbing the huge incremental volumes involved, leading them to turn increasingly for expansion to the Community market.

G. Causation of injury

(i) *Effect of dumped imports*

(49) In its examination as to whether the material injury suffered by the Community SCTV industry was caused by the effects of the dumping described in recitals 32 and 33, the Commission found that the rapid influx of Korean imports coincides with an equally rapid loss of market share by the Community industry, price erosion and undercutting of the Community's SCTV models, and loss of profitability or rapidly worsening losses on the part of Community companies, together with an accelerated relocation of Community producers' assembly facilities outside the Community.

This process can be followed from its starting point in 1985, when Korean exporters gained less than 2 % of the Community SCTV market, up to the reference period in 1987 when their market share was six times as large and price undercutting of up to 39 % was found by the Commission. Given the sensitivity of the consumer predominantly to price considerations in the small screen sector of the Community colour television market, the low-priced imports from Korea could not fail to affect very negatively the sales volumes, sales prices and consequently the profits of the Community industry. The appearance and rapid development of negative parameters in these areas — or the marked deterioration in, for example, Community industry profitability — correspond exactly in timing with the arrival and rapid penetration of low-priced Korean exports in the Community SCTV market.

(ii) *Effects of other factors*

(50) Although the Commission has found, as discussed above, that material injury has been caused to the Community SCTV industry by dumped Korean exports, this does not entail any assumption that all injury suffered by the industry in recent years is to be attributed to those exports. Despite the high production and sales volumes, and its high market share compared with preceding and following years, the situation of the Community industry was already unsatisfactory in other respects by 1985. Return on sales and on capital were already negative, and a significant amount of production had already been relocated outside the Community, but these observations do not contradict the findings of injury made. The relative complexity of the injury situation does not justify the arguments advanced by the Korean exporters and others to the effect that, firstly, there has been no injury to Community industry and secondly, if there has been, Korean exports played no part in its cause.

(51) One such argument claims that the main effect of Korean exports has been to replace or displace SCTV imports from Japan. In the opinion of the Commission this view rests on an incorrect interpretation of the relative statistics. It is true, of course, that between 1984 and 1987 Korean exports to the Community have progressed from 23 000 to 781 000 units, while exports from Japan have fallen from 607 000 to 334 000 units. To ascribe the reduction in direct Japanese exports to pressure from the Korean exporters neglects completely however the relocation of Japanese SCTV production to facilities in other South East Asian countries, notably Malaysia and Singapore, and in the Community itself.

(52) Two of the Korean exporters claimed that their individual market shares were 'minimal', and that as 'new entrants' on the Community market they could not have caused injury. By 1987 at least, no Korean exporter could any longer legitimately claim to have a negligible market share, even when considered individually. But in any case, the Korean market shares in the Community are to be considered together: the exporters sold a like product, in the same Community market sectors, through comparable sales channels. This assessment is not invalidated by the fact already mentioned that one exporter concentrated almost completely on the OEM market for its sales in the Community. This view is confirmed by the judgment of the Court of 7 May 1987 in the Case 255/84, Nachi Fujikoshi Corporation v. Council of the European Communities [1], where it is stated that the injury caused to an established Community industry must be assessed as a whole, and that it is not necessary or possible to define separately the share of injury attributable to individual exporters involved.

(53) Two exporters claimed that the prevalence of Korean exports to the OEM sector also excluded the possibility of attributing injury to these sales, since the OEM market segment had been left unfilled by the Community producers. While it is true that a large part of the rapid expansion of the SCTV market in the Community centred on the OEM segment, and the expansion of the latter coincided with and was facilitated by the influx of low-priced Korean imports, it is not possible to interpret this as proof of lack of injury. Community producers do sell in OEM sales channels, and these sales would undoubtedly have been much higher but for the existence of low priced competition from dumped imports. There is in addition no justification for arguing that the pressure from imports in the OEM segment can somehow be considered in isolation from the rest of the SCTV market: own-brand prices will obviously be affected when OEM price levels are eroded.

(54) The argument which has been given greatest weight by the Korean exporters alleges that injury has been inflicted by dumped imports from other sources, and consequently the present investigation amounts to a discrimination against Korean exports. The main other sources cited are Austria, China, Hong Kong, Japan, Malaysia, Singapore and Taiwan.

In terms of Community market shares all exporters other than the Koreans covered nearly 39 % of total SCTV consumption in 1984, but this share fell by some 10 % in 1985, only to rise again to over 41 % in 1987. Within these overall figures, however, distinctions naturally need to be drawn between the various exporting countries.

Imports from Japan are on a rapidly declining trend, as already seen in recital 51. Of the remaining exporting countries, most had not attained the critical volumes, in 1987, already reached by the Koreans, and the growth of their imports into the

[1] ECR [1987] p. 1861.

Community was not as rapid as that of the Koreans. The two most significant exporting countries, in terms of volume, among those whose growth of Community market share has been exceptionally rapid (to over 9 % in 1987), and whose average cif landed values in 1987 have been inferior to those of the Koreans in the published import statistics, were Hong Kong and the People's Republic of China. It should be recalled at this point that a supplementary proceeding has been opened against SCTV imports from these sources (1).

In 1987 the declared average cif landed values of SCTVs from Austria, Japan, Malaysia and Singapore were all considerably higher than those of imports from Korea, by 60 % in the case of Austria and Japan. Such data are not conclusive and merely indicative, of course, due to the extent to which transfer prices may be involved in certain cases. However, it must also be emphasized that no evidence — as opposed to allegations — of dumping on the part of the other export sources named has been provided by the Korean exporters.

Critical attention has been drawn by Korean exporters and others to the extent to which Community producers use manufacturing facilities in third countries — particularly Austria, Singapore and Taiwan — and the extent to which imports from these facilities have also grown over the period 1985 to 1987. Reference was made to this fact in recital 42. It is necessary to analyse clearly in what manner these relocation moves to non-Community production facilities fit into the injury situation of the Community industry. Contrary to some arguments advanced on behalf of the exporters, they are a consequence and a measure of this injury rather than a cause : they form part of a series of rationalization measures undertaken by the Community industry to improve profitability, which have been energetically accelerated after 1985 in order to counter the effects of competition from low-priced imports. In fact, the Community producers have sought the same comparative advantage — especially in labour and components costs — as that to which their Korean competitors lay claim. On the basis of its provisional findings, therefore, the Commission considers that allegations of self-inflicted injury, relating to imports of SCTVs by Community producers from non-Community production facilities, are unfounded.

(1) OJ No C 288, 12. 11. 1988, p. 13.

(55) Thus the Commission concludes that dumped imports from Korea have, in isolation, caused material injury to the Community SCTV industry. As already indicated in recital 50, this conclusion does not imply that the Commission considers that all ascertainable difficulties of the Community industry should necessarily be imputed to this cause, rather than to competition between Community companies or to undumped imports from other sources. Reference is made to this point in recital 62, below, in considering the establishment of an appropriate injury threshold.

H. Community interest

(56) In view of the considerable material injury suffered by the Community SCTV industry, particularly in terms of profitability and market share, the Commission considers that, in the absence of measures against dumped imports found to be a cause of that injury, the disappearance of fully integrated production by the complainant industry of this product in the Community is quite probable within the short term. This alone would lead directly to the loss of several thousand jobs. In evaluating whether it is in the Community interest to take such measures, however, it is also necessary to consider further undesirable consequences which could ensue over the longer term.

(57) The initial pressure from dumped imports in this area has been concentrated by the Korean exporters on the SCTV market, which is the fastest growing sector of the overall colour television market in the Community. The risk clearly exists that the large foothold secured in the SCTV sector will be used as a base for attacking the Community industry's market position in the larger screen sizes. Not only would the whole Community colour television market then be subjected to the rapid penetration by dumped products seen in the SCTV sector, but this would also occur at a crucial moment in the Community industry's development, for the latter's technological efforts and progress, particularly in the field of high definition TV, give it the possibility in the medium term of greatly expanding its sales, production and profits in the Community. This possibility will be seriously prejudiced, however, and the efforts the industry has made since 1985 in rationalizing and restructuring its productive capacity will be wasted, if the marketing base which underpins its technological progress has been damaged by unfair competition from imports.

(58) The loss of a secure volume marketing base would be liable to affect the development and profitable commercial exploitation of other new technologies as well as high definition television, owing to the key position which colour television technology occupies in the consumer electronics industry as a whole, being central to related products such as video cassette receivers and laser video disk players, for example. In addition, the damage would extend beyond the consumer electronics field, since the general electronics components industry would be severely damaged by the loss or weakening of its principal volume customer.

(59) Exporters and importers' associations have argued that the imposition of anti-dumping measures in this case would be contrary to the Community interest, because they would result in higher prices, less competition, and reduced consumer choice.

These arguments all refer to possible undesirable effects for consumers, at the retail level, it being unlikely that importers' employment or profits will be damaged by such measures, since these will not seriously restrict either the wide range of Community-produced and imported sources for SCTVs or price competition between different brands.

Since SCTVs are imported as a finished product which undergoes no further processing before sale to the final consumer, it is clear that the imposition of measures should normally result in correspondingly higher prices for consumers, at least for those SCTVs originating from the sources covered by this proceeding. However, the extent of such price rises is expected to be limited, in view of the fact that competition between the numerous different Community producers and exporters to the Community will in practice be hardly reduced. The number of different sources of SCTVs is also still increasing, and it is therefore difficult to accept that consumer choice will be materially reduced. Furthermore, an examination of the theoretical injury thresholds in this case, described in recitals 61 and 62, indicate that the dumping measures provisionally imposed, when translated into higher selling prices, do not eliminate the substantial competitive pricing advantages held by the Korean exporters.

(60) In conclusion, after weighing the various interests involved, the Commission considers that the imposition of measures in the present case will re-establish fair competition by eliminating the effects of dumping practices found to be employed by the Korean exporters. The measures will modify, but not eliminate, the effectiveness of price competition in this field. To be effective, price competition needs to be practised on a fair basis: price advantages based on unfair practices are unjustifiable within the accepted structure of international trading relationships and may be harmful even to consumer interests in the longer term, when they are used to weaken competitors in a way which leads to restriction of market choice.

The Commission considers that it is therefore in the Community's interest to eliminate the injurious effects to the Community industry of the dumping determined. The benefits of such protection for the current viability and the future development of that industry outweigh the possible disadvantages, of a limited and temporary nature, for the consumer in terms of somewhat higher prices for certain imported SCTVs.

I. Duty

(61) In order to eliminate totally the injury sustained by the complainant Community producers it would be necessary for all undercutting, as described in recitals 40 and 41, to be eliminated. In addition, these producers would need to be placed in the position where they could achieve further price rises — at the same time regaining market share — in order to enable them to eliminate losses and to realize adequate returns on sales and assets. This would permit the compensation of the losses of market share and of profits which occurred both before and during the reference period for which undercutting was established. In the circumstances of this industry, and for the purposes of provisional determination, the Commission considers that an adequate annual return on sales allowing a balanced long term development would be 10 %. If these elements are combined, in a calculation of the price levels that would be necessary to remove all the above indicators of injury, it can be shown that price increases of Korean imports of above 60 % at the cif level for all exporters would be required.

(62) The Commission considers however, as discussed in recitals 50 to 55, that it is inappropriate to impute the totality of the ascertained injury suffered by the complainant Community producers to dumped Korean exports. Nor does Regulation (EEC) No 2423/88 impose such a requirement: Article 4 (1) requires in effect merely that other possible causal factors of injury should not be ascribed to the dumped imports. Naturally the isolation of the injury factors attributable to dumped Korean imports poses considerable problems in the circumstances of this case. These imports have, of course, affected indicators such as the price erosion and the losses accumulated in the

Community industry since 1985, but the interpretation — and above all the quantification — of this effect is imprecise, owing to the presence of other factors operating at the same time. In order to avoid this difficulty, and at the cost of possibly underestimating the injury attributable to the dumped imports, the Commission considers that for the purposes of provisional determination injury should be measured only in terms of the price undercutting found to have been practised by the Korean exporters on the Community market. When this undercutting, which is measured at an adjusted resale price level in recital 41, is expressed at the cif level, margins of between 36 and 49 % are arrived at, according to the exporter concerned. These individual thresholds represent the price increases at the Community frontier necessary to remove the injury defined in terms of undercutting.

Since no dumping margin as high as the lowest injury threshold of 36 % has been established in this proceeding it was considered appropriate, so as to eliminate as far as possible the injurious effect of the dumped imports, that the amount of provisional duty to be imposed should correspond to the dumping margins found.

(63) It has been argued on behalf of the Korean exporters that the disparity between the undercutting percentages and the dumping margins established indicate that the injury ascertained originates from factors other than dumping, notably the cost advantage of the third-country producers.

The Commission does not wish to exclude the possibility of cost advantage on the part of the exporters, especially in labour costs and to a certain extent in components prices. It considers, however, that this advantage is limited, since the labour content of SCTV production is small in modern plants such as those operated by the complainant Community producers. It certainly cannot account for injury thresholds as large as those set out in the preceding recital. The Commission considers that such margins are accounted for by other factors as well as cost advantage, including, in particular, dumping — against which the Community industry is entitled to protection.

(64) In respect of any Korean companies which may have started or may start producing SCTVs and exporting them to the Community after the end of the investigation period, the Commission is prepared to initiate a review proceeding without delay whenever the exporting company can provide sufficient evidence to satisfy the Commission that no such exports took place before 31 December 1987, and that it is not related to or associated with any of the companies subject to the present investigation.

(65) As was mentioned previously in recital 54, a supplementary proceeding has been opened in respect of SCTVs from Hong Kong and from the People's Republic of China. During the investigation doubts have been raised as to the origin for Community customs purposes of this product when manufactured and exported by Hong Kong companies. In response to requests by certain exporters and their representatives, and in view of the fact that the abovementioned proceeding is still open and findings are not complete, the Commission has decided that the Hong Kong exporters currently cooperating with its investigation should — in the event that Korean origin should be attributed to any of their exports of SCTVs to the Community — be excluded from the application of the present provisional duty. It is emphasized that this exclusion is strictly temporary and provisional, and without prejudice to any determination of the origin for customs purposes of SCTVs manufactured in Hong Kong. The scope of this exclusion is subject to revision in the light of the outcome of the investigation at present being carried out or in any other procedure which may be undertaken relevant to this question.

(66) It should be recalled that the Commission has published a notice in the Official Journal [1] referring to the possible application of anti-dumping duties with retroactive effect in this case. This question will be examined during the period leading up to the proposal of any definitive duties.

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty of 19,6 % of the net free-at-Community-frontier price before duty is hereby imposed on imports of small screen colour televisions corresponding to CN code 8528 10 71 originating in the Republic of Korea.

[1] OJ No C 334, 29. 12. 1988, p. 6.

The rate of duty for small screen colour televisions manufactured and sold for export by the following companies shall be :

— Daewoo Electronics Co. Ltd : 10,2 %,

— Goldstar Co. Ltd : 12,3 %,

— Samsung Electronics Co. Ltd : 13,0 %,

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

2. The duty specified in paragraph 1 shall apply to small screen colour televisions of all sizes up to and including a diagonal screen size of 42 centimetres, whether or not combined in the same housing with a radio broadcast receiver and/or a clock.

3. The duty specified in paragraph 1 shall not apply to small screen colour televisions manufactured and sold for export to the Community by the following Hong Kong companies, even if such products are determined to be of Korean origin :

— Cony Electronic Products Ltd,

— Far East United Electronics Ltd,

— Hanwah Electronics Ltd,

— Hong Wah Electronic Enterprises Ltd,

— Koyoda Electronics Ltd,

— Luks Industrial Co. Ltd,

— Tai Wah Industries Ltd,

— Universal Appliances Ltd.

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

5. The release for free circulation in the Community of the products referred in paragraphs 1 and 2 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) 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, 24 October 1989.

For the Commission

Frans ANDRIESSEN

Vice-President