COUNCIL REGULATION (EEC) No 501/89

of 27 February 1989

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Article 12 thereof,

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

Whereas :

A. Provisional measures

(1) The Commission, by Regulation (EEC) No 2684/88 [2], as amended by Regulation (EEC) No 2826/88 [3] imposed a provisional anti-dumping duty on imports of certain video cassette recorders (hereafter referred to as 'VCRs') originating in Japan and the Republic of Korea. The duty was extended for a maximum period of two months by Regulation (EEC) No 4019/88 [4].

B. Subsequent procedure

(2) Following the imposition of the provisional anti-dumping duty, all the exporters and one independent importer requested and were granted an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.

(3) Upon request, parties were also informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to these disclosure meetings. Their comments were considered and, where appropriate, the Commission's findings were modified to take account of them.

C. Scope of the proceeding

(4) In recitals 6 to 12 of Regulation (EEC) No 2684/88, the Commission justified the limitation of the proceeding to the Korean and two Japanese exporters. The exporters and one importer maintained the position set out in recital 7, but did not submit any further evidence, information of arguments.

The Council confirms the Commission's conclusions set out in recitals 8 to 11 of Regulation (EEC) No 2684/88.

D. Product under consideration and determination of like product

(5) In its provisional findings (recital 13 of Regulation (EEC) No 2684/88), the Commission concluded that the products under consideration were VCRs capable of recording and playing back recorded video and sound signals and therefore exluded so-called video cassette players. In cases where a VCR is combined in one housing with a television monitor this combination has to be regarded as a different product because the VCR does not necessarily determine the character of the whole product. These combinations contain specific elements which impart an additional quality to them.

(6) In the application of Regulation (EEC) No 2684/88 the question arose as to whether so-called mecadecks should be regarded as VCRs. In order to clarify the situation it is hereby stated that mecadecks were not formally included in the proceeding by the opening notice [5]. For the purposes of this proceeding, they cannot be considered to be identical to a VCR because a mecadeck is considered to be an incomplete VCR which is not capable of performing the functions of independently recording and playing back a video signal. The Council therefore concludes that the proceedings are limited to VCRs and do not cover video cassette players, combinations of VCR with a TV monitor and mecadecks.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 240, 31. 8. 1988, p. 5.
[3] OJ No L 254, 14. 9. 1988, p. 14.
[4] OJ No L 355, 23. 12. 1988, p. 4.
[5] OJ No C 256, 26. 9. 1987, p. 15.

E. Normal value

(7) Normal value for the VCRs subject to the provisional duty was, for the purpose of definitive findings, generally established on the basis of the methods used for the provisional determination of dumping, taking into account new evidence submitted by the parties concerned.

(8) One exporter objected to the inclusion of tax free sales to unrelated customers who supplied the personnel of the South Korean army and of so-called 'coupon sales'. 'Coupon sales' are tax free sales to unrelated customers in South Korea destined for consumption in Korea, but paid with special coupons purchased by Korean nationals working abroad. The exporter considered these sales to be different from normal dealer sales as they are destined for special types of customers and do not bear excise, defence and value added tax.

The Commission, however, established that these sales resembled similar contracts concluded with dealers and should therefore be regarded as normal dealer sales. They were made in considerable quantities and were invoiced at prices similar to those of normal transaction when the abovementioned taxes were deducted from the normal dealer sales prices. This view is confirmed by the Council.

(9) The Council also confirms the Commission's view that the normal values for comparison with prices for exports to original equipment manufacturers (OEMs) should be constructed and calculated on the basis of the cost of production and a profit margin of 5 %, as set out in recitals 20 to 23 of Regulation (EEC) No 2684/88.

(10) The investigation and later submissions revealed that the accounting methods of the three Korean exporters applied to their export production were different to those applied to domestic production. The production cost figures for exports were therefore not comparable to those used for domestic production. The Commission therefore used the production cost for the domestic models and adjusted it by amounts estimated on the basis of differences in material costs, including import charges. For one Korean exporter these adjustments were estimated on the basis of the differences established for the two other exporters since this exporter did not give access to original documents during the investigation, as requested by the Commission, in order to verify the submitted production cost calculations prepared especially for the purpose of this investigation. This method is confirmed by the Council.

In respect of Orion no further submission had been made to enable the Commission to establish a normal value for the final determination.

F. Export price

(11) When exports were made to subsidiary companies in the Community, export prices were constructed on the basis of the prices at which the VCRs were resold to the first independent buyer, suitably adjusted to take account of all costs incurred between importation and resale and of a profit margin of 12,7 %. The margin of profit considered to be reasonable was established on the basis of the profits achieved by independent importers who resold the VCRs in the Community.

With regard to Orion, no further submission was made to establish export prices.

The Council confirms the Commission's findings and conclusions as expressed in recitals 27 to 30 and 32 to 33 of Regulation (EEC) No 2684/88.

G. Comparison

(12) All comparisons were made at the ex-works level. For the purpose of a fair comparison between export prices and the normal value, due allowance was made for differences affecting price comparability in accordance with Community legislation.

The Commission therefore took account, where appropriate, of differences in physical characteristics and selling expenses where claims of a direct relationship of these differences to the sales under consideration could be satisfactorily demonstrated. This was the case in respect of differences in credit terms, warranties, commissions, salaries paid to salesman, packing, transport, insurance, handling and ancillary costs, import charges and indirect taxes.

(13) The Council confirms the Commission's findings with regard to differences in physical characteristics, as expressed in recital 35 of Regulation (EEC) No 2684/88. Where the calculation of the amount of these adjustments could not be based on

price differences on the domestic market, a similar method as set out in recital 10 of this Regulation for the calculation of the normal values for exports to OEMs was used.

(14) One exporter alleged that the differences in production costs due to the different television standards (NTSC, PAL, Secam) had no effect on price comparability. Apart from the fact that this allegation cannot be substantiated, because of the lack of direct competition between different TV standards in any one market, it can not be concluded that these standards would not affect price comparibility. If there were to be such competition, however, the likelihood is that consumers would appreciate the better quality of European TV standards and be prepared to pay higher prices for them.

(15) As regards finance costs for credit granted to independent customers by the three Korean exporters, the Commission accepted, after further submissions from these companies, that the costs for financing exise and defence taxes are directly related to the sales on the domestic market as the tax amounts paid to the Korean authorities are to a very high extent (well over 90 %) solely dependent on the quantities of VCRs sold on the domestic market. For the calculation of this allowance the payment delay granted for these taxes by the Korean authorities was taken into consideration.

(16) With regard to finance costs for value added tax (VAT), however, a direct relationship to the sales in question was not established. The amount paid to the tax authorities is calculated on the balance between the VAT on the goods purchased and the same tax on sales to customers. In this amoumt the VAT paid for VCRs cannot be identified separately. The finance costs for the VAT cannot, therefore, be considered as selling expenses but are, in fact, a normal operational overhead. This view is confirmed by the Council.

(17) Submissions were made by the Korean exporters regarding the allowances for import charges included in the VCRs destined for consumption on the Korean market. The new information submitted, however, was not sufficient to prove the exact amount of import charges on parts physically incorporated in the domestically sold models. The Commission therefore estimated these adjustments on the basis of the value of the raw materials directly imported into Korea by these companies, using an average import tax rate of 20 %. The Council confirms this approach and the Commission's provisional findings as expressed in recital 36 of Regulation (EEC) No 2684/88.

The Commission's findings as laid down in recital 39 to 41 of Regulation (EEC) No 2684/88 are confirmed by the Council.

H. Model selection

(18) As far as the comparability of domestically sold models to those sold for export is concerned, the Commission chose — for each or the different export models separately — the domestic model which most resembled them, since there were no identical models.

(19) After the imposition of provisional duties, two Korean exporters asked the Commission to base the comparison for certain export models on different domestic models, which they claim bear a closer resemblance than those chosen by the Commission. Although the Commission was able to agree to this request in certain cases, in other instances it maintained its initial choice of models since these were considered to be the closest in resemblance in terms of technology (model generation), technical equipment and other features.

(20) The assessment of the Commission, which is confirmed by the Council, was based on a very detailed examination of all exported and domestically sold VCRs by the exporters concerned. This included a careful comparison of samples provided by the exporters and took account of explanations provided by their technical staff when the Commission officials verified the information at the premises of the exporters. Where the models chosen for comparison on the basis of the same technological and technical equipment had different features, the dumping calculation took account of these physical differences.

I. Dumping margins

(21) The final examination of the facts shows the existence of dumping in respect of imports of VCRs originating in Japan and South Korea from all the exporters investigated, the margin of dumping being equal to the amount by which the normal value, as established, exceeds the price for export to the Community.

(22) The margins of dumping varied according to the exporter concerned, the weighted average were as follows :

— Daewoo	23,7 %
— Goldstar	18,9 %
— Samsung	17,2 %
— Funai	11,5 %

J. Community industry

(23) In Regulation (EEC) No 2684/88 (recitals 45 to 47) the Commission described the state of the VCR industry within the Community and made distinctions between those companies manufacturing the complete VCR, or a major proportion of it, themselves and those who only assembled premanufactured units.

(24) Some parties have expressed doubts about the feasibility of such a distinction. The Council takes the view that, in any event, it is certain that the complainant companies, Philips, Thomson, Grundig and Nokia-Graetz, manufacture complete VCRs and that these firms represent a major proportion of the Community industry.

K. Injury

(25) In its provisional findings, the Commission concluded that the Community VCR industry had experienced material injury. This conclusion was based mainly on the increase in the market share of the exporters involved in the proceeding, their price undercutting, the price depression caused thereby and the development of the profit and loss situation of the complainant industry.

(26) No new evidence or information concerning these findings was submitted to the Commission after publication of Regulation (EEC) No 2684/88. One exporter questioned the statistical basis of the calculation of market shares, however, and details of the comparability of models and features in respect of the price undercutting margins. These comments were considered, although it was found that if they were taken into consideration they would not have any effect on the findings with regard to injury. The exporter concerned was duly informed of this finding in writing.

The Council therefore confirms the findings of the Commission, as set out in recitals 48 to 56 of Regulation (EEC) No 2684/88.

L. Causation of injury by dumped imports

(27) The Commission concluded in recital 60 of Regulation (EEC) No 2684/88 that the volume of the dumped imports, their market penetration and the extremely low prices at which the dumped goods were offered for sale had caused material injury to the Community industry. No new evidence or information was given by any party concerning these findings.

(28) One importer argued that the success of the VCRs sold by his company was due to his own outstanding ability to design products to suit consumer demand and to his superior marketing ability. While the Commission did not question this importer's ability to meet consumer demand it considered that it was plainly evident that this success was also based partly on an unfair advantage gained from dumping practices and that only this factor would be eliminated by the imposition of anti-dumping measures.

The Council therefore confirms the conclusions of the Commission in recitals 57 to 61 of Regulation (EEC) No 2684/88.

M. Community interest

(29) In recitals 62 to 66 of Regulation (EEC) No 2684/88 the Commission considered that it was in the Community's interest to protect the Community industry from the injurious effects of the dumped imports. One importer argued that this protection would eliminate competition with the complainant industry, whose technical design and production methods he claimed were out of date. These allegations could not be confirmed. Apart from the complainant companies and the exporters concerned, there are a great number of VCR producers and suppliers on the Community market and this should, undoubtedly, ensure adequate competition. No evidence could be found to suggest that the complainant industry was in any way lagging behind its competitors in the use of high technology in its products, or in its production methods.

(30) Taking into consideration the need to maintain a competitive Community industry in the consumer electronics sector, as well as the consumer demand for cheap, modern goods, the Council concludes that, based on the considerations of the Commission as laid down in recitals 62 to 66 of Regulation (EEC) No 2684/88, it is in the Community's interest to take the appropriate measures against the dumped imports.

N. Duty

(31) For the provisional anti-dumping measures the Commission considered it necessary to impose duties at the level of the dumping margins found because the level of injury established was much higher. This course was not contested by any interested party.

(32) As far as the duty on goods exported by Orion was concerned, the company did not challenge the view that it had not cooperated sufficiently in the investigation. They suggested, however, that the

dumping margin of Funai should have been applied, as was the case for the provisional duty. However, for the determination of the duty on exports by Orion, the Council has to use the evidence available, which in this case is the evidence supplied in the complaint. By choosing not to cooperate, Orion may be presumed to have accepted the allegations made in the complaint and therefore cannot ask to be treated in the same way as a company which cooperated fully in the proceeding and demonstrated that its dumping margin was lower than that calculated on the basis of the complaint.

(33) On the basis of the injury calculation threshold method described in recitals 67 to 72 of Regulation (EEC) No 2684/88 the Council therefore concludes that duties should be imposed at the level of the actual dumping margins (recital 22 of this Regulation) found and for Orion on the basis of the complaint, i. e. 13 %.

(34) The definitive duty to be imposed should apply to all VCRs exported from Korea (except for those produced and exported by Samsung, Goldstar and Daewoo) and those produced or exported by Orion from Japan, with the exception of video cassette players, combinations of VCRs with a TV monitor and mecadecks.

O. Undertakings

(35) The Korean exporters, Samsung, Goldstar and Daewoo, as well as the Japanese exporter Funai, have offered price undertakings which are considered to be acceptable. The effect of these undertakings will be to increase the prices of the products concerned to an extent sufficient to eliminate the margin of dumping found for these exporters. After consultations within the Advisory Committee, these undertakings were accepted (see Council Decision 89/148/EEC) (1).

P. Collection of provisional duty

(36) In view of the size of the dumping margins established, and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts collected by way of provisional antidumping duty should be definitively collected to the extent of the amount of the duty definitively imposed. In respect of the exporters whose undertakings have been accepted the provisional duty should be collected at the levels of the dumping margins definitively established (recital 22 of this Regulation).

Provisional anti-dumping duties collected or securities received for VCRs which are not covered by the definitive anti-dumping duty should be released.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of video cassette recorders originating in Japan and the Republic of Korea falling within CN codes ex 8521 10 39 and ex 8528 10 11, and the rate thereof shall be set as follows:

(a) The rate of duty for video cassette recorders originating in the Republic of Korea shall be 23,7 % of the net free-at-Community-frontier price of the product before duty.

(b) The rate of duty for VCRs originating in Japan and produced or exported by Orion shall be 13,0 % of the net free-at-Community-frontier price of the product before duty.

2. The duty specified in paragraph 1 (a) shall not apply to VCRs exported by Samsung Electronics Company Ltd, Korea, Goldstar Electric Company Ltd, Korea and Daewoo Electronics Company Ltd, Korea.

3. The duty specified in paragraph 1 shall not apply to video cassette players, combinations of VCRs with a TV monitor or to mecadecks.

Article 2

The amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 2684/88, as amended by Regulation (EEC) No 2826/88, shall be collected up to the following rates:

— Samsung	17,2 %
— Goldstar	18,9 %
— Daewoo	23,7 %
— Funai	11,5 %
— Orion	13,0 %

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

Article 3

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

(1) See page 61 of this Official Journal.

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

Done at Brussels, 27 February 1989.

For the Council

The President

P. SOLBES