COUNCIL REGULATION (EEC) No 1048/90

of 25 April 1990

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

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 12 thereof,

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

Whereas :

A. Provisional measures

(1) The Commission, by Regulation (EEC) No 3232/89 (2), imposed a provisional anti-dumping duty on imports into the Community of small-screen colour television receivers (hereafter referred to as SCTVs) originating in the Republic of Korea and falling within CN code 8528 10 71. The duty was extended for a maximum period of two months by Council Regulation (EEC) No 374/90 (3).

B. Subsequent procedure

(2) Following the imposition of the provisional anti-dumping duty, all the exporters mentioned by name in Regulation (EEC) No 3232/89, as well as the representatives of the complainants, 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) The Commission continued to seek and verify all information it deemed to be necessary for its determinations. For this purpose, investigations were carried out at the premises of the following :

Importers in the Community

— Schneider Rundfunkwerke AG, Türkheim, Federal Republic of Germany,

— Yoko International BV, Halfweg, Netherlands.

(4) Upon request, parties were 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 oral and written comments were considered and, where appropriate, the Commission's findings were modified to take account of them.

(5) Owing to the complexity of the proceedings, in particular to the detailed verification of the voluminous data involved and the numerous arguments put forward, the investigation could not be concluded within the time limit provided for in Article 7 (9) (a) of Regulation (EEC) No 2423/88.

C. Like product, product under consideration, Community industry

(6) In its provisional findings (recitals 7 to 9 of Regulation (EEC) No 3232/89) the Commission found that all Community-produced SCTVs are like products to the SCTVs exported from Korea. In its findings the Commission indicated what it considered to be the principal characteristics of the SCTV sector of the colour television market in the Community. In addition, it listed the main features on which it based its comparisons between Korean and Community-produced models, and explained that certain higher-range Community models had been excluded from the comparison exercises — but not from the like product definition — in order to ensure an overall equivalence of features between the models compared and to avoid possibly misleading results.

(7) The Commission's inclusion within the scope of the proceeding of all SCTVs up to and including sets with a diagonal screen measurement of 42 cm (or 16 inches) was questioned, after the imposition of provisional duties, by a group of exporters which had not previously made themselves known to the Commission, requesting the exclusion of 6-inch

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 314, 28. 10. 1989, p. 1.
(3) OJ No L 41, 15. 2. 1990, p. 1.

screen size SCTVs from the scope of the proceedings. A similar claim was submitted by one of the exporters which had collaborated since the initiation of the proceedings. In the latter case the producer/exporter concerned, although not apparently having sold domestically or to the Community any SCTVs of a screen size smaller than 14 inches (37 cm), submitted an initial request for the exclusion of 10-inch (25,4 cm) screen size (and below) SCTVs, later modifying this claim to cover 6-inch screen (approximately 15 cm) sizes and below only. 6-inch screen models are also commonly sold in a 5½-inch and 5-inch screen size presentation.

(8) The parties arguing for this exclusion have based their claims on differences of a physical nature, on a series of distinctions between the usages for which 6-inch SCTVs are intended and those of larger SCTVs, as well as on points of a formal nature. The Commission accepts that 6-inch SCTVs are much smaller and lighter, and therefore much more portable than the 14-inch or 16-inch sets which constitute — as mentioned in the third paragraph of recital 35 in Regulation (EEC) No 3232/89 — the most representative model sizes of SCTV. It considers that a valid differentiation may be made between the 6-inch and larger SCTVs on the grounds of the disparity of size and weight, and because of the technical features which facilitate the use of most 6-inch models with various battery power sources. In addition 6-inch SCTVs are normally used for viewing of a discontinuous or short-term nature, and often in an out-of-doors environment. The somewhat special market position of these models is illustrated by the fact that, during the investigation period, no significant difference in price could be perceived between the 6-inch and the much larger 14- and 16-inch sets. In the absence of such price differences, the consumer's decision to buy the smaller set is clearly conditioned by the radically different usage for which it is intended.

In these circumstances the Commission concludes that SCTVs with a diagonal screen size of 6 inches and below should be excluded from the scope of the proceedings.

The Council confirms the above conclusions, in addition to the findings set out in recitals 7 to 9, 34 (on the contents of which recital there was no comment by interested parties) and 35 of Regulation (EEC) No 3232/89.

D. Dumping

(i) *Normal value*

(9) For the purpose of definitive findings, normal value was, in general, established on the basis of the same methods as those used in the provisional determination of dumping, after taking into consideration new facts and arguments presented by the parties.

(10) As explained in recital 11 of Regulation (EEC) No 3232/89, a form of rebate granted by Korean producers to their domestic customers in respect of instalment sales made by these customers to end-users was disallowed for the purpose of provisional findings as a deduction from domestic sales prices in establishing normal value. It was established that this instalment sales rebate, known to one company as the 'PSP' (promoting strategic products) rebate, is generally practised in the consumer electronics sector in Korea, although not all of the exporters claimed it as a deduction. The exporters concerned have reacted extensively to the Commission's provisional findings. These reactions have centred on factual considerations surrounding the granting of the instalment sales rebate, and on legal arguments concerning whether the rebate can be said to be directly related to the exporters' sales on the Korean market.

As previously stated in Regulation (EEC) No 3232/89, the Commission considers that there is no dispute as to the facts at issue. It accepts that the rebates are the subject of contracts between the exporter-producers and their customers, and have been applied over a considerable period. It also accepts — having examined the arguments of the exporters — that although payment of the rebate is conditional upon a sale made by the exporter's customer to an end-user on instalment terms, nevertheless it effectively reduces the price to the exporter's customer, and thereby should be considered as directly linked to the price in question as a form of deferred discount. The Commission concludes therefore that this rebate should be deducted from the exporter's domestic gross selling prices when establishing normal value.

This view is confirmed by the Council.

(11) Where exports of SCTVs to the Community were made by the Korean producers on an OEM (original equipment manufacturer) basis, the Commission constructed the normal values for

comparison with the prices of such exports, and calculated the constructed values on the basis of cost of production and a profit margin reduced to 5 %, as explained in recitals 10, 13, 14 and 15 of Regulation (EEC) No 3232/89.

One Korean producer, who had originally proposed the reduced 5 % profit margin as an appropriate level for this purpose, argued however that the Commission's method, although the profit figure used represented a lower rate than that earned overall on domestic SCTV sales by any of the three collaborating Korean producers, nevertheless did not take sufficient account of the other differences between OEM-sales and branded-product sales. In particular, it was alleged that the Commission's method failed to recognise differences in levels of cost between these different types of sales, especially in respect of advertising and financing costs. These, it was said, were included in the constructed normal values used by the Commission, but would not have been incurred by the producers if there had been OEM sales on the Korean market.

In the absence of domestic OEM sales in Korea the Commission considers that there is no reasonable basis for postulating the existence of such differences, or for estimating what their size might be. Indeed, evidence available concerning Korean OEM sales in the Community shows that prices and profits on such sales may be superior to those on own-brand sales in the same market of comparable models : under such conditions, if the possibility existed of observing them on the Korean market, the aforementioned differences would be much more than compensated by the profit level retained for OEM constructed values. The Commission therefore concludes that the use of the reduced profit margin serves to offset any hypothetical differences in both costs (after adjustments granted) and profits in calculating constructed normal values to be compared with OEM export prices, and the Council confirms these findings.

(12) It was alleged on behalf of the complainants that the description 'OEM' was being misused in the context of the present proceedings, and that this had resulted in an overly favourable treatment being accorded to Korean exports to the Community made on a distributor's own-brand basis. According to the complainants, exports to such distributors should not qualify for the sort of treatment which could only be justified in the case of exports to genuine original equipment manufacturers who were supplementing their domestic sales of own-manufactured goods by sales of imports under the same name. However, the Commission is satisfied that, had sales to own-brand distributors been found on the Korean domestic market, it was reasonable to consider that such sales could have been accompanied by a perceptible difference in costs and/or profits, justifying the approach described above in recital 11. In the present proceeding, the Commission considers that the term 'OEM' has been used consistently, and that findings have not been distorted by comparing certain export prices with specific normal values established on an inappropriate basis. The Council confirms this position.

(13) Referring to constructed normal values, one exporter has alleged that, although advertising costs should not be included in these values at all (as mentioned in recital 11 above), if they are included this should not be done on the basis used by the Commission. The exporter in fact claimed that his domestic advertising costs were incurred only on sales of high-tech SCTV models, which were not comparable with the models exported and with the domestic models used as the basis for constructed normal value. Therefore the advertising costs should only be allocated to the domestic turnover of high-tech SCTVs, and not across the whole turnover as proposed by the Commission. This analysis was not shared by the Commission, which considered that it was unrealistic to allocate advertising costs for television sets to individual models and that this could not be justified on the basis of the evidence made available to it. Even when a given model was displayed in some advertisements, effectively in this case the sales of the whole of the producer's range were being promoted. The Council confirms this view.

(14) One exporter alleged that the Commission, in calculating constructed normal values on the basis of the cost of production for domestic models, had attributed financing costs in an unjustifiable and erroneous manner, in such a way as to circumvent the requirement to grant an allowance for the cost of domestic credit when determining normal value. In its submission the exporter had allocated total financial costs over total turnover, both domestic and export. This gave rise to a situation in which the deduction for domestic credit cost allowance on SCTVs verified in Korea on the basis of the extensive terms of credit granted to local customers and local short-term interest rates, proved to be substantially in excess of the financial costs actually

paid or payable as allocated over total turnover. The situation described was exceptional in that it was not reflected in the constructed normal values of the other collaborating Korean exporters, and was explained by the exporter concerned as resulting from the company's high amounts of retained shareholders' equity which enable it to finance its working capital without large-scale recourse to banks and credit institutions.

While recognizing that companies may find themselves in such a fortunate position, the Commission did not find that this corresponded to the case of the exporter in question, just as it did not apply to that of other exporters, even though their financial costs actually paid or payable were even lower than those of the exporter concerned, in relation to turnover. The Commission considers in effect that the exporter's flat rate allocation of financial costs actually paid or payable over turnover does not take account of the enormous disparity between the credit terms granted on his domestic and export markets. It does not consider that — in the absence of the availability of more detailed allocations of the audited financial costs — it is obliged to apply or accept this flat rate allocation. The method it has adopted for definitive determination is that which was submitted and used spontaneously by another exporter, which involves calculating first the absolute amount of interest costs required to finance the domestic credit terms granted, and then to allocate that amount to the domestic turnover of the reference period. When this absolute amount has been deducted from the financial costs actually paid or payable the remaining amount can be allocated over total turnover to cover remaining working capital requirements — stocks, work in progress, etc. The Commission underlines that the method it has used — far from being in conflict with the terms of Regulation (EEC) No 2423/88 — only seeks to take account, on the basis of the available data, of the structure of the exporter's selling terms. It does not involve the Commission in confusing attributed opportunity costs with actual costs, nor does it imply that the Commission sees 'somehow something wrong about the fact that domestic credit costs are higher than export credit costs', as argued by the exporter. His argument that the method circumvents or 'nullifies' the exporter's domestic credit cost allowance cannot be accepted, either. This allowance has been granted by the Commission, as verified ; what is at issue is an allocation of financial costs which better reflects the facts available.

The Commission therefore concludes that this objective is achieved by the methodology outlined above, and the Council confirms this approach.

(ii) *Export price*

(15) Where exports were made directly by the Korean producers to independent customers in the Community, export prices were determined on the basis of the prices actually paid or payable for the SCTVs concerned.

In the case of two exporters whose sales to the Community were made by way of related importers established in Member States, 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.

This methodology was not applied to the third collaborating exporter, only 11 % of whose sales to the Community were made on an own-brand basis, with 8 % through subsidiary companies. The remaining 89 % of this exporter's sales, to Community OEM customers, were therefore considered to be representative, as set out in recital 16 of Regulation (EEC) No 3232/89.

These methods corresponded to those used for the provisional determination of dumping, taking into consideration new facts and arguments presented by interested parties.

(16) Two of the Korean exporters claimed that they had been discriminated against in the use of constructed export price methodology, by comparison with the third collaborating exporter to whom this methodology had not had to be applied because its own-brand sales in the Community were excluded from the determination of dumping since they were not considered representative of its normal operations, as mentioned above. Findings for this producer-exporter were based exclusively on its exports to independent (OEM) importers. One of the two exporters concerned based his criticism on observations that dumping margins found on exports made through related importers were substantially higher than those on exports to independent importers in the Community. The other exporter claimed that this exclusion of own-brand sales from dumping determinations should have been extended to the relatively small share of its exports which were made through a subsidiary whose operations during the reference period were alleged to have been carried out under untypical (start-up) conditions.

The Commission does not admit the allegations made of discriminatory and inequitable treatment in the above matters. It considers that it has applied the methodologies laid down in Regulation (EEC) No 2423/88. The 89 % of the export sales taken into consideration for the purposes of the proceeding in the case of one exporter constituted, as already mentioned, its representative sales, while 11 % were excluded as being unrepresentative. In the case of the exporter which claimed that a small proportion (some 5 %) of his export sales should be excluded, the situation was not comparable, since these sales merely formed part of those own-brand sales which were considered representative for that exporter. While it is true that the profit and loss account of the related importer through which these sales were made was burdened with expenses relating to the start-up of the company, this is not considered to be a sufficient reason to justify the exclusion from dumping determinations of representative sales operations and the expenses involved in undertaking these operations.

(17) The two Korean exporters principally affected by the use of constructed export price methodology claimed that the rate of profit imputed by the Commission (10 %) to related importers was unreasonable and unrealistic. In these claims reference was made to the maturity of colour television as a product and to the lower rate of profit used in some other recent proceedings, including a proceeding concerning a relatively new consumer electronics product. While the Commission would not contest the technological maturity of the current generation of colour televisions, nevertheless it believes that the SCTV sector, at least, was still quite buoyant and profitable for independent importers during 1987. Concerning profit margins adopted in other proceedings, it should be noted that in the case of another consumer electronics product whose reference period corresponded to a large extent to that of the present proceeding, a rate considerably higher than 10 % was used for definitive determination. The Korean exporters have also maintained that the theoretical independent importer's profit rate to be used for constructing export prices must be reasonable in relation to the size and organization of the related importers concerned. The Commission agrees with this argument, and for this reason examined closely the profitability of all those independent importers which collaborated with its investigation. It found that profit rates varied, but the rate it finally retained corresponded to that of a firm whose structure and size could be considered comparable to that of Korean related importers. The Commission would not agree, however, with one exporter which claimed that the profit rate used must take account of a start-up situation in one related importer. The very purpose of the reconstruction of an export price is to create a situation comparable to that of an unrelated importer — who has to make, on average, a reasonable level of profit in order to stay in business. In any case the Commission considers that the data available to it showed that the margin it used was equally valid for a small importer with low costs and for a large company with a structured sales and marketing organization.

(18) Both the Korean exporters concerned by the previous recital had made large reimbursements to their Community subsidiaries for advertising and other expenses of a more general nature incurred by these subsidiaries. For the purposes of provisional duty determination the Commission had disregarded these reimbursements and treated the original expenses as costs of the subsidiaries which had originally paid them. Since these expenses originally paid by the subsidiaries constituted part of the costs incurred between importation and resale, their subsequent reimbursement by the Korean parent companies is irrelevant and must be disregarded in constructing export prices. The exporters continued to make representations about these reimbursements, referring in general to the very high amount repaid to the German subsidiaries, although the same phenomenon had been found to a lesser degree in the UK companies. The arguments presented did not differ substantially from those already set out in Regulation (EEC) No 3232/89 in recital 20, but in some cases alternative allocations of the expenses involved were proposed. With the exception of the correction of a guarantee costs item in the case of one exporter (the misinterpretation of which had been induced by the subsidiary's confusing accounting treatment of the reimbursement involved) and the exclusion of two smaller items in the case of the other which could be accepted as having no relationship with the ordinary costs of the subsidiary concerned, the Commission adopted the position it had already taken in Regulation (EEC) No 3232/89.

In the light of the Commission's considerations set out in recitals 15 to 18 above, the Council confirms the Commission's findings and conclusions in recitals 16 to 20 of Regulation (EEC) No 3232/89.

(19) One Korean exporter-producer sold large quantities on an OEM basis to an importer in the Community which failed to provide all the financial information requested by the Commission in respect of its imports, as set out in recital 21 of Regulation

(EEC) No 3232/89. The Commission accepts that the data supplied by the exporter, which has made efforts to persuade the importer concerned to supply more information to the Commission, should not be re-examined or put in doubt because of the importer's partial non-collaboration. The Council confirms this finding.

(20) Another Korean exporter was found on verification at an independent importer's premises to have a cooperative advertising agreement with the importer, as set out in recital 22 of Regulation (EEC) No 3232/89. Having now examined fully the arguments of the parties concerned and the circumstances of this agreement for the reimbursement of certain advertising expenses, the Commission accepts that there is no compensating arrangement between the exporter and the importer within the terms of Article 2 (8) of Regulation (EEC) No 2423/88. The exports to the importer in question have therefore now been included in the definitive determinations made. However, the reimbursements (in reality a form of deferred rebate) paid by the exporter to the importer in respect of the latter's advertising in the local market have been deducted from the invoice prices payable when comparing export prices with normal value, since these rebates effectively reduce the sales price to the independent importer and must therefore be considered to be directly related to the sales under consideration.

The Council confirms these findings.

(iii) *Comparison*

(21) As explained in Regulation (EEC) No 3232/89, recitals 23 and 26, all comparisons were made at ex works level. For the purposes of ensuring 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 conditions and terms of sale, where these differences could be satisfactorily demonstrated. Under this heading adjustments were also made for differences in commissions, packing, transport, insurance, handling, loading and ancillary costs, payment terms, warranty expenses, and salesmen's salaries and bonuses.

This approach is confirmed by the Council. New facts and arguments presented by interested parties on these issues are treated in the following recitals numbers 22 to 26 of this Regulation.

(22) The method of comparison of export with domestically sold SCTV models explained in recital 24 of Regulation (EEC) No 3232/89 was not contested by the parties, except by one exporter which noted that the Commission had not applied consistently the principle of comparison set out in that recital and had based the physical difference adjustment in its case on the difference in total costs of manufacturing comparable models instead of on the value of the difference in the significant physical characteristics of the models concerned, as required by Article 2 (10) (a) of Regulation (EEC) No 2423/88. The Commission corrected this inconsistency in its definitive determinations.

At the stage of its provisional determination, the Commission had valued the physical differences on the basis of the respective factory production costs involved, since it was impossible to isolate these physical differences and the corresponding market value differences by reference to SCTVs sold on the domestic market in Korea. However, for the purposes of definitive determination, the Commission decided to base this evaluation on the significant physical differences in full cost of production terms including the profit margin of the domestic models in question. The Commission considers that this represents a more reasonable approach to determining the appropriate differences in market value than one which neglects the ratio of selling, general, and administrative costs plus profit which are normally included in the prices of the domestic models, which models form the basis of the comparison. The Korean exporters have claimed that physical differences should continue to be evaluated on the basis of the relevant manufacturing costs in the absence of available price differences. This view appers to the Commission to neglect the market evidence available that significant physical differences in general correspond to marketing features for which the difference asked in price is much higher in proportion to manufacturing cost than the full cost plus normal profit method now used. The Commission therefore maintains the latter approach.

(23) In respect of payment terms, one exporter claimed that certain D/A (documents against acceptance) interest charges, paid to third parties in respect of exports to its subsidiaries, should not be deducted from export prices when comparing these with

normal value, on the grounds that such costs formed part of the transfer price between related companies, which is ignored by the Commission when constructing export prices. The Commission cannot follow this reasoning: the D/A interest charges are costs actually borne by the exporter, whether paid in Korea or by the related importer company, which should be deducted when arriving at the ex-factory export price under the terms of Article 2 (8) and (10) of Regulation (EEC) No 2423/88.

This exporter also submitted, without prejudice to the claim mentioned above, that the rate of interest used by the Commission to calculate the incidence of these charges was too high. It provided data, in fact, which differed both from what was included in its original submission and from what the Commission had verified on the spot. However this data corresponded with the terms of Article 2 (10) (c) (iii) of Regulation (EEC) No 2423/88 and was accepted by the Commission, which used it for the calculation of the deduction in question.

(24) The detailed treatment by the Commission of several adjustments were challenged by one exporter, generally on the grounds that the Commission's appreciation of the 'directly related' nature of the expenses concerned was erroneous.

This exporter argued that the Commission had neglected the directly related nature of the following selling costs, and should allow them as deductions against domestic prices when calculating normal value:

— financing costs for the collection of value added tax,

— certain servicing expenses,

— certain sales department salaries, of management and secretarial personnel.

As explained in recitals 27, 28 and 30 of Regulation (EEC) No 3232/89, the Commission had found that these expenses were not directly related to the sales in question, and were classifiable as overhead costs of the organization concerned. The arguments presented by the exporter did not lead the Commission to change the findings reached on the basis of its original verification.

The same exporter also argued that two export selling expenses, treated by the Commission as deductible from export price paid or payable, were in the nature of overhead expenses, and were not directly related to this price. One of these was a fee for service, relating mainly to export inspection and handling charges. The other was a form of commission retained by the group headquarters corporation, through which all export invoices to the Community are processed, on the receipts collected from export customers by the headquarters corporation. The Commission did not consider that the facts and arguments presented were such as to change the findings made on the basis of its verification, or to change its conclusion that these charges had to be deducted in order to arrive at a correct level of ex-factory export price.

In view of the Commission's considerations set out in recitals 21 to 24 of this Regulation, the Council confirms the Commission's findings and conclusions in recitals 23 to 31 of Regulation (EEC) No 3232/89.

(iv) *Dumping margins*

(25) On comparing normal values for domestically sold models of the Korean producer-exporters which were investigated with the export prices of comparable models on a transaction-by-transaction basis, the final 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 of these exporters, 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 weighted average margins, expressed as a percentage of cif frontier prices, varied according to the exporter as follows:

— Daewoo Electronics Co. Ltd:	10,23 %
— Goldstar Co. Ltd:	10,42 %
— Samsung Electronics Co. Ltd:	10,50 %

(26) For those exporters who did not make themselves known in the course of the investigation, a dumping margin of 19,65 % was determined on the basis of the facts available as explained in recital 33 of Regulation (EEC) No 3232/89. No new facts or arguments were presented by exporters as to this methodology.

The complainants argued that this method was highly favourable to non-collaborating exporters, in that the average dumping margin found on the basis of Community import statistics was reduced since it incorporated the data of the collaborating companies, whose dumping margins are clearly considerably lower than the average margin resulting from the statistics. In order to offset this statistical bias the complainants suggested that the average import prices used should be corrected by a

factor of at least 5 %. The Commission maintains its position on this issue, since although it recognizes the statistical phenomenon pointed out, there are no facts available to it which would provide a basis for the introduction of this correction factor, which would therefore be completely arbitrary and unjustified.

The Council confirms the above conclusions.

E. Injury

(27) The Commission concluded in its provisional findings that the Community SCTV industry had suffered material injury. It based this finding principally on the Korean exporters' rapid increase in volume of exports and in market share, the price undercutting practised by these exporters in the Community market, the accelerating relocation of Community industrial capacity in third countries with consequent loss of Community employment, and the negative trend of profitability of complainant Community producers.

(28) No new facts concerning these findings were submitted to the Commission after the publication of Regulation (EEC) No 3232/89, but exporters did request clarification concerning the composition of market share statistics and the inclusion or otherwise in the statistics of extra-Community production by complainant producers, which was supplied to them. They also challenged injury findings on a number of points :

— Evidence of injury was contested by two exporters. One maintained that the data presented in Regulation (EEC) No 3232/89 showed only the existence of a 'normal, healthy' competitive situation, and a Community industry whose position did not effectively worsen between 1984 and 1987. This exporter claimed that the increase in demand over this period was 'in all likelihood' created by new competition in the market, whose price competitivity was a function purely of cost advantage. The other exporter argued that the negative evolution of Community industry profitability from 1985/86 onwards was the result purely of factors existing prior to the arrival of Korean imports. This exporter also cited capacity utilization and stock levels of the Community industry as evidence of lack of injury, without in any way however addressing the Commission's arguments in recital 43 of Regulation (EEC) No 3232/89 which disqualified these factors as reliable indicators in the case of the SCTV Industry.

— One exporter contested the model comparison which formed the basis for the Commission's analysis of undercutting. Its detailed arguments on this question contained a number of material errors, and in any case did not provide grounds for a change in the Commission's basic position, namely, that its study does not compare Korean and Community SCTV models unfairly, taking all features into account. The Commission informed the exporter of these matters in writing.

The Council therefore confirms the findings of the Commission, as set out in recitals 36 to 47 of Regulation (EEC) No 3232/89.

F. Threat of Injury

(29) In its provisional findings, the Commission concluded that a threat existed of increased injury from Korean exports in the future, in view of the large Korean production capacities, and in view of the possibility of diverting exports from the now saturated United States market.

Two exporters commented on the Commission's findings on this issue, set out in recital 48 of Regulation (EEC) No 3232/89 claiming that no evidence has been produced by the Commission to meet the requirements of Article 4 (3) of Regulation (EEC) No 2423/88. The Commission would point out that it discusses the export capacity available in the country of origin in the said recital 48. The rate of increase of the dumped exports is not referred to explicitly in that recital, but is of course mentioned by the Commission in recital 37 of Regulation (EEC) No 3232/89. The annual rate of increase from 1984 to 1987 was over 100 %.

One exporter claimed that the possibility of diverting export capacity from the United States to the Community market was not substantiated because of the differences in models (presumably referring in particular to the difference in broadcasting standards). The Commission submits that this last argument itself does not seem strong, in view of the extreme flexibility of television production mentioned in recital 42 of Regulation (EEC) No 3232/89, and the industry's evident ability to introduce different featured models very rapidly.

The Council therefore confirms the provisional findings of the Commission.

G. Causation of injury

(30) In recitals 49 to 55 of Regulation (EEC) No 3232/89, the Commission found that a rapid influx of Korean imports coincided with an equally rapid loss of market share by the Community industry, price erosion and undercutting of the industry's SCTV models, and worsening profitability on the part of Community companies, together with an accelerated relocation of their assembly facilities in third countries. The Commission concluded that dumped imports from Korea had, in isolation, caused material injury to the Community SCTV industry.

(31) One exporter claimed that causation of material injury by the dumped Korean imports had not been demonstrated by the Commission, on the grounds that the economic circumstances constituting the injury would have occurred even in the absence of dumping. This argument addresses primarily the Commission's findings of price undercutting, which in fact was only one of several injury elements contributing to the material injury analysed in Regulation (EEC) No 3232/89. On the specific issue of price undercutting, the exporter in effect argues that the disparity between undercutting of 36 to 49 % and dumping of 10 to 13 % proves that some undercutting would have taken place even in the absence of dumping. This may be so, but it does not entitle the exporter to draw the conclusion that a material degree of injury resulting from undercutting cannot be attributed to the dumping in question. This argument appears equivalent to claiming that causation of injury could only be demonstrated, and accordingly protection against dumping could solely be justified, when dumping margins were at least as high as the injury thresholds determined. The Commission does not accept this view, and would refer also to the findings set out in recital 63 of Regulation (EEC) No 3232/89 on this matter.

(32) Another exporter, in addition to repeating arguments already addressed by the Commission in recital 54 of Regulation (EEC) No 3232/89, alleged that the Commission had failed to examine the impact of Japanese-owned assembly operations in the Community.

The Commission considers that the location of Japanese-owned SCTV production in the Community has been a gradual process extending over a long time period. In terms of market shares, the trend is not distinct, since this production has to a large extent replaced previous imports from Japan or already existing capacity within the Community. There is however no evidence that it has contributed particularly to the injury situation of the Community complainant industry examined in this proceeding.

(33) The same exporter rejects the Commission's assertion that significant injury has taken place on the important United Kingdom market, on the grounds that it was protected by a voluntary restraint agreement. The Commission refers again to its arguments set out in recital 47 of Regulation (EEC) No 3232/89 and would observe that the determination of injury, like that of dumping, is a matter of analysis and calculation based on the facts gathered during an investigation. The non-existence of dumping and injury cannot simply be deduced from the existence of a voluntary agreement or another kind of restriction concerning the market in question. The Commission considers that there is no evidence for the exporter's claim and repeats that findings of injury have been made on data referring to the United Kingdom market.

(34) This exporter alleges once more that there has been discrimination against Korean exporters in this proceeding, since other exporting countries, notably Austria, Japan, Malaysia and Singapore are not being investigated. The Commission presented its arguments on this question in recital 54 of Regulation (EEC) No 3232/89. Even if the Commission's arguments are true, claims the exporter, 'that does not necessarily mean that these products (i. e. SCTVs from the above countries) are not being dumped in the Community and causing injury'. Beyond these allegations, the exporters have however provided no evidence of such dumping and injury. In the absence of such data, having examined the position of other exporting countries to the Community, the Commission has no basis for opening anti-dumping proceedings against them as demanded by the exporter. Furthermore, even if these other exporting countries had caused injury, there is no indication that the injury caused by Korean dumped exports would thereby be rendered non-material.

The Council confirms the Commission's findings and conclusions in recitals 49 to 55 of Regulation (EEC) No 3232/89, that the imports under consideration, taken in isolation, have caused material injury.

H. Community interest

(35) No further facts or arguments concerning this subject were submitted to the Commission by any of the parties. The Council therefore confirms the Commission's conclusions set out in recitals 56 to 60 of Regulation (EEC) No 3232/89, that it is 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 future development of that industry outweigh the possible disadvantages, of a temporary nature, for the consumer in terms of limited price increases for certain imported SCTVs.

I. Duty

(36) Provisional measures took the form of anti-dumping duties ; these were imposed at the level of the dumping margins determined, since injury thresholds, even when set on a restrictive basis at the level of the cif equivalent of the undercutting margins found, were much higher.

(37) As the Commission's findings on injury set out in Regulation (EEC) No 3232/89 have now been confirmed by the Council, and injury thresholds remain much higher than the dumping margins definitively determined, the Council concluded on the basis of the injury threshold calculation method set out in recital 62 of that Regulation that duties should be imposed at the level of the dumping margins found.

(38) The Council notes the readiness of the Commission to initiate review proceedings without delay when a Korean producer of SCTVs can provide satisfactory evidence that it did not export to the Community during the investigation period covered by the present proceedings, that it has since commenced exports or has the firm intention to do so, and that it is not related to or associated with any of the companies subject to the present investigation, as explained in recital 64 of Regulation (EEC) No 3232/89. Pending such a review, however, the Council considers that it would create an opportunity for circumvention to apply in such cases any anti-dumping duty lower than the highest dumping margin determined. The Council notes that no exporter has so far come forward on this basis.

(39) In recital 65 of Regulation (EEC) No 3232/89, the Commission explained that it had decided to exclude, on a strictly temporary basis, certain Hong Kong exporters from the scope of the provisional duty, in the event that Korean origin should be attributed to any of their exports of SCTVs to the Community. This provision was made at the request of Hong Kong exporters and their representatives. It has been challenged by the complainants, and by a Korean producer, who argued that the derogation from the normal application of origin rules that the provision implies is incorrect and discriminatory towards Korean exporters. The Commission considers, in the light of the facts now available to it, that this derogation is not justified and should not be prolonged beyond the period of provisional duty on SCTVs originating in Korea. The Council confirms this conclusion.

J. Undertakings

(40) No formal offers of undertakings have been received. One exporter has made informal proposals, and was informed by the Commission that it would be unable to recommend the acceptance of undertakings in this case. In effect the Commission considers that the degree of non-collaboration experienced during the proceedings, and the rapidity with which model changes are introduced in this industry, would make the observance of undertakings difficult to verify, while their monitoring would be very costly. Given these considerations, and the general high level of mobility of SCTV production capacity, the Commission finds in addition that undertakings are unlikely to contribute at present to the restoration of fair competitive conditions in the market. The Council confirms these conclusions.

K. Collection of provisional duties

(41) In view 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 anti-dumping duties should be definitively collected to the extent of the amount of the duty definitively imposed.

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive 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 television receivers falling within CN code ex 8528 10 71 (Taric code 8528 10 71*10) originating in the Republic of Korea (Taric additional code 8429).

The rates of duty for small-screen colour television receivers manufactured and sold for export by the following companies shall be as set out below, expressed as a percentage of the net, free-at-Community-frontier price before duty :

	Rate of duty	*Taric additional code*
— Daewoo Electronics Co. Ltd :	10,2 %	8425
— Goldstar Co. Ltd :	10,4 %	8426
— Samsung Electronics Ltd :	10,5 %	8427

2. The duties specified in paragraph 1 shall apply to small-screen colour television receivers with a diagonal screen size of more than 15,5 cm but no greater than 42 cm, whether or not combined in the same housing with a radio broadcast receiver and/or a clock.

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

Article 2

The amounts collected or secured by way of provisional anti-dumping duty under Regulation (EEC) No 3232/89 shall be collected at the rates of duty definitively imposed where the definitive rate of duty is lower than the provisional anti-dumping duty and at the rates of provisional duty in all other cases. Secured amounts which are not covered by the rates of duty definitively imposed shall be released.

Article 3

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

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

Done at Brussels, 25 April 1990.

For the Council

The President

M. O'KENNEDY