COUNCIL REGULATION (EEC) No 112/90

of 16 January 1990

imposing a definitive anti-dumping duty on imports of certain compact disc players originating in Japan and the Republic of Korea and collecting definitively 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 Articles 9 and 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 2140/89 (2) (hereinafter referred to as 'the Commission Regulation') imposed a provisional anti-dumping duty on imports of certain compact disc players originating in Japan and the Republic of Korea. That duty was extended for a maximum period of two months by Council Regulation (EEC) No 3444/89 (3).

B. SUBSEQUENT PROCEDURE

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

(3) Some Japanese exporters who cooperated during the proceeding had presented additional claims which required further examination. Investigations, limited to these additional claims, were carried out on the premises of some exporters in Japan, where it was considered possible so to do within the time constraints between provisional and definitive duty.

(4) Some importers and exporters who did not make themselves known to the Commission within the time limit specified in the opening notice applied to be heard according to Article 2 of the Commission Regulation. While their views were fully taken into account, no new full investigation of any exporter could be carried out within the time constraints. The new and unverified data submitted by them had to be disregarded.

(5) 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.

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

(7) Due to the complexity of the proceeding, in particular to the detailed verification of the data and the number of exporters 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. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT AND COMMUNITY INDUSTRY

(8) In its provisional findings, the Commission considered that all Community-produced stand-alone compact disc players, as defined in recitals 7 to 12 of the Commission Regulation, are like products to all stand-alone compact disc players exported from Korea and Japan and that the Community producers, Philips, Grundig and Bang & Olufsen form the Community industry, within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88. Although some exporters continued to claim that these models should not be considered like products, because of the differences in the level of technical specifications and the sophistication of features, no new arguments were presented by the exporters against these findings. They are, therefore, confirmed by the Council.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 205, 18. 7. 1989, p. 5.
(3) OJ No L 331, 16. 11. 1989, p. 45.

D. EXPORT PRICE

(a) Sales to independent importers

(9) With regard to export sales made by Japanese and Korean exporters directly to independent importers in the Community, prices were determined on the basis of the price actually paid or payable for all sales of the product sold for export net of all taxes, discounts and rebates actually granted and directly related to the sales under consideration.

(b) Sales to related importers

(10) In cases where exports were made to subsidiary companies which imported the product into the Community it was considered appropriate, in view of the relationship between exporter and importer, that export prices be reconstructed on the basis of the prices, net after discounts and rebates, at which the imported product was first resold to an independent buyer. Discounts, rebates and the value of free goods directly linked to a sale under consideration were deducted from the price to the independent customer and suitable adjustment was made to take account of all costs incurred between import and resale, including all duties and taxes.

(11) For some subsidiaries, some costs, mainly advertising, market research and also some operating costs, were reimbursed by the exporting parent company and, consequently, shown as revenue in the subsidiary's accounting records. It was considered, however, that these expenses were incurred by the subsidiaries, are normally borne by the importing subsidiaries and, consequently, have to be considered as part of their costs.

(12) Two exporters paid, in Japan, advertising expenses in fact incurred in Europe, for literature expenses, promotional campaign and brand name promotion realised exclusively or partially in Europe, exclusively or partially for the product under consideration. It was considered, for the Member States of the Community where the exporter concerned has importing subsidiaries, that these expenses, in so far as they related to the Member State and the product concerned, were to be considered as expenses normally incurred by the sales subsidiaries and they were added to the cost of these subsidiaries unless the company concerned could show that the expenses concerned were such as should normally be borne by the exporter. In fact, any other treatment of such expenses would introduce a discrimination between the abovementioned exporters and those whose subsidiaries paid directly all the expenses normally incurred by them.

(13) For one company it was found that the figures concerning the cif prices incorporated in the computer listings submitted by its subsidiaries in Europe were incorrect. The company has agreed that the Commission use the prices contained in the written submission for its computer calculations.

(14) One exporter requested the Commission to exclude 34 % of the resales of its sales subsidiary in the Community concerning three out of the five models it sold during the investigation period, on the grounds that these sales were stock sales as the models concerned were not produced during the investigation period. The Commission, in keeping with Regulation (EEC) No 2423/88 and previous practice, considered that the time of sales is the determining factor rather than the time of production. Accordingly, this claim could not be accepted.

(15) After publication of the Commission Regulation, one exporter claimed a basis of allocation for advertising expenses different from that claimed in the original submission verified by the Commission. The modification of the method of allocation of one item of expenses at such a late stage of the proceeding could not be accepted. A global turnover allocation of expenses was used.

(c) Categories of customer

(16) The Council confirms the Commission's findings on establishing export prices as set out in recitals 19 to 22 of the Commission Regulation for the exporters other than those mentioned below.

(17) Four exporters, i.e. Yamaha, Sanyo, Pioneer and Matsushita, claimed again that their export sales were made to categories of customer distributors, different from those to whom sales were made on the domestic market (generally a mixture of distributors and retailers and, in some cases, end users) and account should be taken of this fact.

(18) The Commission therefore carefully examined the functions of the customers and whether they were clearly reflected, for the markets and the product concerned, in the quantities sold and in the pattern of prices charged. It concluded that export sales were effectively made to distributors.

E. NORMAL VALUE

(a) Domestic price

(19) Generally, for most of the producers/exporters included in the proceeding, normal value was established, as for the purpose of provisional findings,

on the weighted average domestic prices of all sales to independent customers. These prices were net of all discounts and rebates directly linked to the sales of compact disc players (hereinafter referred to as 'CDPs').

(20) One exporter claimed that the normal value established for its sales on the domestic market should take account of the purchase value of compact discs which, it alleged, were given as a form of rebate on the price paid for the product under consideration. It was established that these rebates-in-kind were directly linked to the sales under consideration. The exporter claimed that the effective purchase value of these goods should be deducted from the domestic selling price. It was established that these goods were purchased by the exporter several years before the investigation period and neither an indication of their cost had they been purchased during the investigation period nor an estimate of the effect of these goods on the market value of CDPs were provided. Accordingly, the Commission estimated this effect to be the cost of similar goods purchased during the investigation period by the same exporter; this cost was deducted from the domestic selling price.

(21) One Korean exporter claimed that its domestic sales should not be taken as a basis for normal value because its selling quantities were very low in absolute amount and its selling prices were very high and, consequently, should not be considered as reflecting the 'general price situation'. The Council accepts the Commission's position concerning the absolute amount of sales as expressed in recital 27 of the Commission Regulation. The Commission has established that the prices in question have effectively been charged in the normal course of trade by the exporter concerned. Accordingly, the claim could not be accepted.

(b) **Categories of customer**

(i) *Selective normal value — OEMs*

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

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

(23) The Council confirms the Commission's findings on establishing normal value for Sony on the basis of the sales of this company to unrelated distributors as set out in recitals 29 to 31 of the Commission Regulation.

(24) The four exporters mentioned in recital 17 claimed that a distinction had to be made between categories of their first independent buyers. They claimed, in particular, that special categories of unrelated clients had functions clearly distinct from those of other categories of unrelated customers and that these different functions were clearly reflected in the size of the quantities sold, in the pricing policy and in the pattern of prices found on the market. They claimed that those special categories of clients were at the most appropriate level of trade for comparison with export sales and that, accordingly, the normal value for these exporters should be established selectively on the basis of the weighted average domestic prices of their sales to these categories of independent customers.

(25) The Commission carried out additional on-the-spot investigations. For two of the exporters concerned, i.e. Yamaha and Sanyo, it was established that the special categories of unrelated clients concerned, (i.e. independent distributors for Sanyo and independent retailers for Yamaha), had functions which were distinct from all other categories of unrelated clients insofar as these special categories sold only to the other categories of client, i.e. to retailers and end users for Sanyo and to end users for Yamaha. Pioneer and Matsushita claimed the use of selective normal value on the basis of their sales to special categories of clients who, these exporters claimed, were companies which, when purchasing through their centralized purchasing department, behaved like a distributor whilst acting as a retailer when reselling through their distribution network. It was established, for the product concerned, that the purchasing departments of these clients had functions which were distinct from all other categories of unrelated clients insofar as, in their relation with the exporter/producer in question, they assumed distributor functions.

(26) The Commission also compared the quantities sold, the pricing policy and the level of prices charged to these special categories of client with those charged to other categories of unrelated clients. The result of the comparison for three of the exporters concerned showed a clear distinction in quantities sold, a marked difference in pricing policy and a consistent pattern of prices reflecting the distinct functions of these clients compared

with the other independent customers. For the fourth exporter, Sanyo, a distinction could be established for some customers in quantities and even in pricing policy but, for the investigation period, no consistent pattern of prices existed. Sanyo seemed to have a consistent pricing policy of lower prices to independent distributors compared to other categories of independent clients at every moment, for the product concerned. Nevertheless, the decrease of prices of the models concerned during the investigation period and the higher sales realized to customers other than distributors towards the end of this period more than compensated the effect of Sanyo's pricing policy. Thus, in average terms for the investigation period, the prices to independent distributors were higher than the average prices to all clients.

(27) In view of such evidence, the Commission accepted that for Yamaha, Pioneer and Matsushita, sales to the special categories of clients claimed were made at a level of trade different to the sales made to other categories of clients. The Commission also accepted that domestic sales to these special categories of clients were at the most appropriate level of trade for comparison with export sales and that, accordingly, the normal value for these exporters should be established selectively on the basis of the weighted average domestic prices of their sales to these categories of independent customers. As far as Sanyo is concerned, the Commission concluded that, even if a difference in level of trade existed between the independent distributors and the other categories of customers, this difference did not result in a clear pattern of prices for the product concerned in the investigation period. Consequently, this difference cannot justify any approach other than the establishment of the normal value for Sanyo on the basis of the weighted average domestic of its sales to all independent customers.

(28) The Council confirms this conclusion.

(29) Two exporters presented a claim before the imposition of provisional duties alleging that the normal values established for them on the basis of all domestic sales to independent customers were not comparable to the export prices because of a difference in level of trade. No additional evidence was supplied after the imposition of the provisional duty. Consequently, the Council confirms for these exporters the Commission's findings and conclusions as set out in recitals 33 to 35 of the Commission Regulation.

(c) **Transfer prices**

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

(31) One exporter continued to claim that normal value should be determined on the basis of transfer prices because the production company and its related sales subsidiaries did not form one economic entity. The same exporter also continued to claim that Article 2 (7) of Regulation (EEC) No 2423/88 should apply to its transfer prices. Nevertheless, no new evidence or arguments were submitted. The Council, for the reasons stated in recitals 38 to 40 and 43 to 44 of the Commission Regulation, confirms the Commission's conclusions as set out in recitals 41 and 45 of the same Regulation.

F. CONSTRUCTED VALUE

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

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

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

(35) In cases where sales on the domestic market of a model of a producer or exporter were unprofitable but sold in sufficient quantities, the SGA expenses used in its constructed value were those of its domestic sales, the profit being the weighted average calculated on its other profitable models sold on the domestic market, or where it did not have profitable sales of other models, by reference to the weighted average profit for other exporters.

(36) The SGA and profit considered in the calculation of the constructed normal values of the companies for which a selective normal value was used were those established for their sales to the same category of customer which were used as a basis for the calculation of the selective normal value. Two of these exporters submitted SGA amounts calculated on the basis of a different allocation than a direct turnover allocation without substantiating to the satisfaction of the Commission the methods proposed. The Commission made use of turnover allocations for those two exporters.

(37) The Korean exporter referred to in recital 21 also claimed that the Commission should not, in constructing normal values, apply the average profit realized by it on its profitable sales because the quantities, though they exceeded 5 % of export sales, were relatively low in absolute quantities and, consequently, the profit realized was unreliable and not suitable for use. However, it was considered that a low absolute amount of domestic sales realised in the ordinary course of trade cannot, by itself, be a sufficient reason to justify a departure from the general approach concerning profit calculations as outlined in recital 35.

(38) One other Korean exporter requested that the SGA and profit of its domestic sales for products other than CDP's should be used for the normal value instead of the average SGA and profit of all other Korean exporters. Such an approach would be inconsistent with Article 2 (3) (b) of Regulation (EEC) No 2423/88 because average SGA and profit of all other Korean exporters were available and suitable.

(39) Two exporters also claimed that the use, in the constructed OEM normal values, of an OEM profit at a level of 30 % of the brand profit level was inconsistent with the Commission's previous practice where a 5 % flat margin was used. The Commission, however, considers that, at the level of a specific company, a necessary link exists between expenses incurred and profits realised for own-brand models and those incurred and realised for OEM models (see recital 40). The Commission considered that a profit rate which corresponded to 30 % of the own-brand profit constituted a reasonable estimate to reflect the differences which could exist between own-brand and OEM prices if sales of the latter had taken place on the Korean market. The fact that in some previous proceedings the Commission considered it appropriate to use a flat percentage is not contradictory with a specific approach to a given product that the Commission considers more accurate. Furthermore, this percentage gives for the Korean market, a profit rate which is more favourable to the exporters who have no domestic sales than the flat rate that the Commission has used in previous proceedings.

(40) One Korean exporter claimed that for the constructed OEM normal values, the flat margin 30 % of average brand profit for all Korean exporters should be used instead of 30 % of its own-brand profit. The Commission considers that the link between OEM/Brand profits is to be established first at the level of each exporter if the company concerned has brand sales on the domestic market. Indeed, normal business behaviour for a company that can supply a market with high profits is to try to benefit from these profits instead of supplying with a very low profit an OEM client who, in fact, becomes a competitor. In such circumstances, only if an exporter has no brand domestic sales, a reference to other exporters' profits can be used in accordance with Article 2 (3) (b) of Regulation (EEC) No 2423/88.

G. COMPARISON

(41) For the purpose of a fair comparison between normal value and export price, due allowance in the form of adjustments was made in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88 to both the export price and the normal value for the differences affecting price comparability such as difference in physical characteristics, difference in import charges and indirect taxes and difference in selling expenses, where claims of a

direct relationship of these differences to the sales under consideration could be satisfactorily demonstrated.

(42) Sony claimed allowances for the salaries of salesmen working in their domestic audio sales department. This department sells CDP's only through two sales channels, i.e. independent distributors and sales subsidiaries. Sony claimed that they do not need salesmen to sell to their related sales subsidiaries and, consequently, the salesmen in the audio sales department can only sell to the independent distributors. Nevertheless, no evidence was submitted to the Commission demonstrating any difference between the independent distributors and the sales subsidiaries as far as their distribution functions and their operational relations with Sony are concerned, which could justify the argument presented by Sony that salesmen were not necessary for selling to sales subsidiaries but they were necessary for selling to independent distributors. Consequently, this claim could not be accepted.

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

(44) Sony claimed a bigger allowance for warranty and servicing expenses incurred by related servicing companies. They claimed the full amount of cost of goods as it appears in the profit and loss accounts of these companies. This amount could not be considered in its totality because the spare parts purchased by the servicing companies were sold by Sony. Therefore, overheads and profit and other expenses not related to the sales of CDPs were incorporated in the amount of the allowance requested. Consequently, no additional allowance to that already granted at the provisional stage was accepted.

(45) Funai claimed allowances for freight, insurance and credit terms calculated on a different basis than that used for the SGA expenses included in the cost of production resulting in allowances exceeding the corresponding amounts included in the SGA expenses. Consequently, the amount of the SGA expenses were amended in order to reflect the totality of these expenses and then the requested allowances were granted.

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

H. DUMPING MARGIN

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

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

Japanese exporters:

	%
Nippon Columbia Co. Ltd (Denon) Tokyo:	17,02
Funai Electric Trading Co. Ltd, Osaka:	8,95
Kenwood Corporation, Tokyo:	23,34
Lux Corporation, Tokyo/Alpine Electronics Inc., Tokyo:	1,54
Marantz Japan Inc., Tokyo:	2,29
Matsushita Electric Industrial Co. Ltd, Osaka:	26,31
Onkyo Corporation, Osaka:	8,57
Pioneer Electronic Corporation, Tokyo:	26,32
Sanyo Electric Co. Ltd, Osaka:	26,58
Sony Corporation, Tokyo:	10,17
Teac Corporation, Tokyo:	18,34
Victor Company of Japan (JVC), Tokyo:	17,99
Nippon Gakki Corporation, Yamaha Hamamatsu:	27,58

Korean exporters:

Inkel Corporation, Seoul:	14,49
GoldStar Co. Ltd, Seoul:	26,11
Samsung Electronics Co. Ltd, Seoul:	10,73
Haital Electronics Co. Ltd, Seoul:	19,42

(49) As regards the companies which did not cooperate fully with the Commission during the preliminary investigation, i.e. Chou-Denki, Hitachi, NEC, Sharp and Toshiba, the circumstances remained unchanged up to the final examination of the facts and, accordingly, the Council confirmed that it would be appropriate that definitive findings for these companies should be made on the basis of the facts available in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88. In this connection, it was considered that

the results of the Commission's investigation provided the most appropriate basis for determination of the margin of dumping.

(50) For Chou Denki information submitted by the company and other exporters allowed the specific calculation of a dumping rate of 17,82 %.

(51) For Toshiba and Sharp, information submitted by the complainants and the parties concerned allowed a specific calculation of dumping rates which were established as follows

Toshiba :	31,00 %
Sharp :	32,00 %

(52) For Hitachi and NEC the information available was not sufficient to allow a specific calculation of dumping rates.

(53) It was considered that, in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88, it would create an opportunity for circumvention of the duty and would constitute a bonus for non-cooperation to hold that the dumping margin for the abovementioned two exporters, those exporters which neither replied to the Commission's questionnaire nor otherwise made themselves known and also for those who made themselves known subsequent to the imposition of the provisional duty, was any lower than the highest dumping margins determined with regard to any exporter who had fully or partially cooperated in the investigation. Consequently, it was considered appropriate to use the dumping margins of 26,11 % for Korea and 32,00 % for Japan for these groups of exporters.

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

I. INJURY

(55) In its provisional findings, the Commission concluded that the Community CDP Industry had experienced material injury. This finding was based mainly on the increase in the market share of the Japanese and Korean exporters, the price undercutting and price underselling, the price depression initiated by them and the development of the profit and loss situation of the complainants.

(a) Evolution of the Community market and market shares of dumped imports

(i) *Size of the Community market*

(56) The size of the Community market at the level of sales to traders was established by adding the total imports to the Community to the total Community production and deducting from these figures the total Community exports.

(57) Further information made available to the Commission confirms its provisional findings of a very rapid increase of the Community market of CDPs covered by the proceeding. From an index 100 in 1984, it increased to 350 in 1985, 1 193 in 1986 and 1 337 in 1987.

(58) Some Japanese exporters claimed that the stocks of their related importers and also stocks held by the Community industry should also be taken into account in these calculations. However, it was established that, for the product concerned, the stocks of the Community industry were mainly held by their national sales subsidiaries in the Member States. Consequently, the method of establishing the size of the market explained in recital 56 provided a reasonable estimate of the market at the level of sales to related and independent traders (national distributors, big retailers).

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

I. Volume and market shares of dumped imports from Japan

(59) The volume of CDPs covered by the proceeding and imported from Japan was 97 924 units in 1984, 528 912 units in 1985, around 1 467 400 units in 1986 and around 2 094 500 units in 1987. For the investigation period (May 1986 to June 1987), this volume was around 1 615 400 units.

(60) When the Japanese producers started exporting CDPs to the Community in 1984, they achieved a less than 50 % share of the Community market. In 1985 this reached around 68 % and in 1987 it reached around 70 % of the total Community market.

II. Volume and mrket share of dumped imports from Korea

(61) The volume of CDPs imported from Korea was 12 units in 1984, 1 526 units in 1985, 33 934 units in 1986 and 148 352 units in 1987. For the investigation period this volume was 89 478 units.

(62) When the Korean producers started exporting CDPs to the Community in 1985, they achieved a share of less than 1 % of the Community market. In 1986, this share increased to around 1,5 %, in 1987 it increased to almost 5 % of the total Community market.

III. Market share of total dumped imports from both Japan and Korea

(63) The market share of all exporters concerned was less than 50 % in 1984, around 70 % in 1985 and around 80 % in 1987.

(iii) *Volume and market shares of Community industry*

(64) The number of CDPs produced in the Community increased from an index 100 in 1984 to an index 789 in 1986 and decreased in 1987 to an index 552. This increase is by far inferior to the market size increase (see recital 57).

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

(iv) *Production capacity, utilization and stocks*

(66) The Commission found that the actual production capacity rose from an index 100 in 1984 to an index 767 in 1987 with a capacity utilization rate which decreased by approximately 25 % between 1983 and 1987.

(67) Stocks also rose from an index 10 in 1984 to an index 133 in 1985 and 1 633 in 1986. Community producers did not increase production capacity for 1987. Nevertheless, capacity utilization decreased from more than 50 % in 1986 to less than 40 % in 1987. The increase of exports from an index of 100 in 1984 to an index 755 in 1987 did not succeed in reversing the decrease in the capacity utilization rate.

(b) **Price undercutting, price underselling and price depression**

(68) Following a claim received by a Korean exporter for the assessment of the price undercutting, the Commission also compared the prices of the Community producers with those of the Koran exporters at the level of sales to OEM companies in the Community. Seven Korean models were compared, each one with the most comparable Community produced OEM model. These comparisons showed that all seven Korean models were sold at prices from 28,6 % to 36 % lower than the prices of the comparable Community models. When the target prices were used in the comparison, the resulting underselling ranged from 49,84 % to 55,04 %.

(69) One Korean exporter claimed that, in order to assess undercutting, the Commission should make adjustments for differences in physical characteristics. Nevertheless, no quantification of such differences was provided. The undercutting established for this particular exporter for its OEM exports was 28,6 % and the underselling was 49,84 %. For its brand exports, the undercutting was 19,72 % and the underselling was 44,51 %. Even if the full difference in the cost of manufacture were granted as an adjustment, the undercutting for this exporter would be 11,5 % and the underselling 37,83 % for its OEM exports, and 5,01 % and 35,73 % respectively for its brand exports.

(70) No new evidence or arguments were submitted concerning price undercutting, price underselling and price depression initiated by dumped imports.

(c) **Profitability and employment**

(71) In recital 100 of its Regulation the Commission has established that the Community industry suffered severe financial losses during the reference period. No new arguments or evidence were submitted concerning the Commission's findings on profitability of the Community industry nor on employment (recital 101 of that Regulation) in the Community.

(d) **Conclusion**

(72) These reasons, in addition to those set down in recitals 83 to 101 of the Commission Regulation, led the Council to consider that the market position and financial performances of the Community industry are on a declining trend and that the Community industry is suffering material injury.

J. **CAUSATION OF INJURY BY DUMPED IMPORTS**

(73) The Commission concluded in recitals 104 and 105 of its Regulation that the effects of exports of individual exporters and also the effect of Korean and Japanese imports had to be analized cumulatively and in recitals 106 to 120 that the effects of

dumped imports of CDPs originating in Japan and Korea, taken in isolation, have to be considered as causing material injury to the Community industry.

(a) **Cumulation**

(74) Several Korean exporters continued to claim that the effects of Korean exports should not be considered cumulatively with the effets of the Japanese exports. Since the Korean and Japanese CDPs compete with each other and with the Community production and since the volume and market shares of Korean exports are not negligible and for the other reasons given in recital 105 of the Commission Regulation, the Council confirms the Commission's conclusions on this issue.

(75) Several exporters continued to claim that the Commission falled to show the specific injurious effect of dumped imports of the individual exporters. However, the Council cannot accept these arguments. In accordance with its position in previous cases and with the jurisprudence of the Court of Justice, the Council considers that the injurious effects of the dumped imports of individual exporters concerned have to be assessed together.

(b) **Dumped prices, market shares and profitability**

(76) No new arguments were presented to contest the Commission's conclusions concerning the relation between dumped prices, market shares and profitability of the Community industry.

(c) **Other factors**

(77) One exporter continued to argue that the Community industry made wrong commercial decisions in lowering its market price to levels below cost and in accumulating much higher stocks than its Japansese competitors.

(78) The pricing policy of the Community industry was aimed at the defence of market shares as a reaction to the price depression initiated by the dumped imports. Such a policy cannot be regarded as wrong business decisions. As far as stocks are concerned, the Community industry claimed that higher stocks were accumulated after dumping by Japanese exporters had started and affected Community industry's sales and market shares. Consequently, such accumulation of stocks cannot be attributable to wrong policy decisions.

(79) Some exporters claimed that the loss of market share of the Community industry is due to the tendency observed among consumers to buy hi-fi equipment, including CDPs, as a package which together offers all the required features and performs the necessary functions of a sound system. A high proportion of consumers allegedly buy individual hi-fi products of the same brand as the ones they already possess, even if they do not buy an entire 'stack' of equipment on one occasion. Consequently, it was alleged, the CDP market share would have a tendency to reach the level of market share in other hi-fi products and the CDP market share of the Community industry should be reduced to the benefit of those producers who have a strong presence across the entire range of hi-fi products.

(80) One of these exporters argued that the depression of Japanese export prices was not caused by dumping but by reduced manufacturing costs of CDPs and supplied some evidence to demonstrate that its own export prices were lowered by less than the reduction of its manufacturing costs.

(81) As far as the arguments concerning the evolution of prices and the consumer's behavious are concerned, it is clear that, in a complex market, like the Community CDP market, the general price level can fall rapidly for reasons other than dumping (recital 83 of the Commission Regulation) and the evolution of market shares results from complex consumer considerations which are not necessarily only price related (recital 108 of the Commission Regulation).

(82) However, the issue involved is whether the normal evolution of the market was affected by the dumping practices of Japanese and Korean exporters in a way that it caused injury to the Community industry. In this respect, the results of the Commissions investigation show a clear parallel between the increase of the dumped exports and a decrease of the Community industry's market share, capacity utilization and profitability.

(83) Furthermore, as far as the evolution of prices is concerned, the Commission has established on the basis of evidence submitted by the Community industry, that in April/May 1986 the prices of the Japanese models decreased more rapidly than the average price of Community models. The Community industry has partially reacted to the loss of its market shares by decreasing its own prices and this decrease brought, in most cases, selling prices

below cost of production and generated losses. No evidence or arguments were submitted to contest this conclusion.

(84) As far as evidence on the relation between the specific exporter's export prices and manufacturing costs is concerned, the Council considers that this relation at the level of an individual exporter cannot, in the present case, be considered sufficient evidence of the reasons which caused the general price depression referred to above. Furthermore, even the evidence submitted by the exporter does not provide any explanation for the quicker price decrease of Japanese export prices in April/May 1986.

(d) Conclusion

(85) The Council is of the opinion that, even if it were correct that the Community industry is facing difficulties attributable in part to causes other than the dumping, the difficulties resulting from the dumped imports taken in isolation have to be qualified as material injury.

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

K. COMMUNITY INTEREST

(87) In its provisional findings, the Commission considered the general Community's interest, the interests of the Community's CDP industry, of the consumers and end users and also of other industies and activities concerned i.e. CD producers, musicians, artists, etc. For the reasons given in recitals 121 to 137 of the Commission Regulation, it concluded that the Community interests call, on balance, for granting protection to the Community industry.

(88) In addition to the findings concerning the consumers' interest developed in recitals 134 to 136 of the Commission Regulation, evidence available to the Commission confirms that the imposition of duties should not affect adversely to any significant extent, the range and prices of CDPs available to the consumer, all the more since at least eight of the Japanese companies who cooperated in the proceeding representing, during the investigation period, 89,95 % of total exports of all Japanese companies that cooperated, are already engaged in production of CDPs at plants within the Community or have announced plans to do so.

(89) No new arguments have been submitted concerning Community interest. Therefore, for the abovementioned reasons and for those expressed in recitals 121 to 137 of the Commission Regulation, the Council concludes that it is in the overriding interest of the Community that the injury due to dumping be eliminated and that the Community industry be accorded protection against dumped imports of CDPs from Japan and Korea

L. DUTY

(a) Amounts of the duty

(90) In order to eliminate the injury suffered by the Community producers, the duty should be such as to allow them to eliminate their losses and obtain a sufficient return on sales by permitting them to increase substantially the selling prices of their own produced CDP's without losing, perhaps even regaining, their market shares in the Community.

(i) *Method of calculation*

(91) The method of claculation was explaineed in recitals 140 to 149 of the Commission Regulation. Following comments received by the parties concerned, three elements have changed. Firstly, considering the cliam of the Community producers that a return on sales of 15 % was required to operate competitively taking account of all relevant economic factors, the evidence submitted to support this claim and the absence of any substantive comments from the exporters, it was decided that a 12 % return on sales can be regarded as appropriate. Secondly, the calculations which, for the purpose of the provisional duty were limited to OEM sales and the German market alone for brand sales were extended to include also the brand sales in the French and UK markets. Thirdly, following a substantiated claim received from an exporter, the Commission accepted to increase his export prices to independent distributors by actual amounts instead of the 25,86 % average increase applied to other exporters.

(ii) *Arguments of the Community industry*

(92) The Community industry claimed that, in order to remove injury, the elimination of losses and the restoration of profitability cannot be enough. The recapture of lost market shares and the necessary expenses in research and development, advertising, distribution and investments, should also be considered in the calculation of the amount of duty necessary to remove the injury. In order to cover this additional aspect, it was claimed that the return on sales of the Community industry should be 25 %.

(93) The Council accepts that in cases where high market share losses have occurred like those suffered by the Community CDP industry, it might be appropriate in order to eliminate injury to take into consideration the additional costs for the Community industry necessary to recapture market shares. However, looking to the specific circumstances of the present proceeding and the CDP's Community market, it was concluded that this claim could not be accepted, mainly for two reasons. Firstly, the Community industry did not provide a quantification of such additional expenses to the satisfaction of the Commission. Secondly, the level of injury established for the Community CDP industry was very high. Consequently, for almost all significant exporters, the results of these calculations show that the duties have to be at the level of the dumping margins found. An additional increase of the return on sales of the Community industry would affect only some small producers occupying specialised segments of the market and causing limited injury. Consequently, it cannot be anticipated that such an increase will result in an increase of market shares for the Community Industry.

(iii) *Arguments of the exporters*

(94) Several exporters claimed that, because some or all of their CDP models were sold at prices higher than the comparable Community models, their sales did not cause any injury to the Community industry.

(95) In order to assess if these claims are justified, the Council examined the Commission's findings and conclusions concerning the relations between prices of imported CDP models and prices and market shares of the Community Industry.

(96) The Commission has established (recital 11 of its Regulation) that all models of stand-alone CDPs have a high degree of interchangeability from the consumer's point of view. It results from recitals 91, 92 and 143 to 145 that the Commission considered that this interchangeability reaches its higher degrees when the physical characteristics of the models concerned are similar enough. In other words, the Commission considered that the injurious effect of an individual dumped imported CDP model is primarily felt on the most similar Community model or models with which the imported model is in direct competition from the consumer's point of view. Furthermore, the Commission established in recitals 108 and 109 and also 115 and 116 of its Regulation that a relation exists between prices and market shares of directly competing models and that the Community industry had to defend its market shares against not only price undercutting but also a general lowering of prices of directly competing models. The Council considers the exporters mentioned in recital 94 above have not presented any arguments or evidence capable of modifying the Commission's findings and conclusions. Under such circumstances, the claim has to be rejected because it takes no account of these considerations.

(97) Several exporters claimed that the group of models in direct competition, as established by the expert mentioned in recital 92 of the Commission Regulation was not satisfactory. New criteria and/or new weighting of the criteria used by the expert were proposed after the imposition of provisional duties and, in some cases, after the final disclosure of the Commission's intention for the definitive measures in accordance with Article 7 (4) of Regulation (EEC) No 2423/88, different groups of models were proposed.

(98) The Commission recalls firstly that the expert was chosen in agreement with all the exporters concerned; secondly that he has established his model comparison on the basis of objective criteria subsequently applied to all companies involved in this proceeding, thirdly that the exporters concerned were given a reasonable opportunity to comment on these criteria and their weighting and that these comments were taken into consideration. Because the model comparison is a complicated exercise and involved the external expert, in cases where alternative groups of models were proposed, the Commission first calculated the resulting influence on the duty level of the exporter concerned. If the level of injury on the basis of the Commission comparison was higher than the dumping margin established for an exporter and continued to be so if calculated on the basis of the model comparison proposed by him, the Commission did not consider it appropriate to establish whether the specific claim was founded or not. Only in one case could such a claim have an influence on the amount of duty. In this case, the claim had to be rejected because the exporter concerned proposed an alternative weighting of the criteria used by the expert which was not substantiated to the satisfaction of the Commission.

(99) Finally, some exporters claimed that adjustments for differences in physical characteristics between Community and imported models should be introduced to the calculation of the amount of duty necessary to remove the injury.

(100) It was first considered that these groups of models resulted from the general method criteria and weighting applied by the expert. Consequently, for the exporters who exported many models to the Community, even if significant physical differences existed between compared models, no evidence was submitted to show that the general method applied resulted, on average, in a significant overestimation or underestimation of the features and quality of their models. Furthermore, the method applied by the Commission implies that were the adjustments to have an effect on the resulting duty they should be made to the selling prices of the imported models. Such a modification of prices would only influence the basis of the calculation of the percentage increase mentioned in recital 145 of the Commission Regulation. The difference would be marginal and certainly not enough to modify the resulting level of duties for all exporters mentioned in recitals 105 and 106 below. Furthermore, for those of these exporters who have claimed an alternative model comparison, with the exception of the one mentioned in recital 98, the calculation made by the Commission on the basis of the model comparison proposed by themselves gave a result higher than their dumping margin.

(101) For the three companies mentioned in recitals 50 and 51, the evidence available was not sufficient to allow a specific calculation of the amount of duty necessary to remove the injury. It was therefore considered appropriate that the duty for these exporters should be established at the level of the dumping margin.

(b) Conclusion

(102) The Council concludes that on the basis of the injury calculation threshold method described in recitals 145 to 148 of the Commission Regulation and for the abovementioned reasons, the duty to be imposed should be at the level of the dumping margin for all exporters mentioned in recitals 48 and 50 above, with the exception of Teac, Lux Corporation, Alpine Electronics Inc. and Marantz Japan Inc.

(103) For Teac, the duty should be the injury threshold. For Lux Corporation, Alpine Electronics Inc. and Marantz Japan Inc., the amount of duty thus established was *de minimis* and thus does not justify the adoption of protective measures.

(104) For other companies which neither replied to the Commission's questionnaire nor otherwise made themselves known or refused full access to information deemed to be necessary by the Commission for its verification of the company's records, the Council considers it appropriate to impose the highest duty calculated, i. e. 32 % for products originating in Japan and 26,11 % for products originating in Korea. Indeed, it would constitute a bonus for non-cooperation to hold that the duties for these producers/exporters were any lower than the highest anti-dumping duty determined.

(105) The duty to be imposed should apply to all CDPs as defined in recital 8 above from Japan and Korea.

M. UNDERTAKINGS

(106) Several exporters have offered price undertakings. It was, however, considered that, in view of the number of these exporters, the number of models exported by them, the number of possible features of the product concerned and the frequent renewal of models, an undertaking would be difficult to implement and would require extensive resources to be monitored. Thus, after consultations with the Advisory Committee, these undertakings were rejected.

N. COLLECTION OF PROVISIONAL DUTIES

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

2. The rate of the duty shall be 32 % for products originating in Japan (Taric additional code : 8279) and 26,1 % for products originating in Korea (Taric additional code : 8285) of the net free-at-Community-frontier price before duty with the exception of imports of the products specified in paragraph which are produced or sold for export by the following companies, the rates of duty applicable to which are set out below :

(1) The Taric code shown is that applicable on the date on which this Regulation enters into force.

Japanese exporters:

	Rate of duty %	*Taric additional code*
Nippon Columbia Co. Ltd (Denon) Tokyo:	17,0	8267
Funal Electric Trading Co. Ltd, Osaka:	8,9	8268
Kenwood Corporation, Tokyo:	23,3	8269
Matsushita Electric Industrial Co. Ltd, Osaka:	26,3	8270
Onkyo Corporation, Osaka:	8,3	8271
Pioneer Electronic Corporation, Tokyo:	26,3	8272
Sanyo Electric Co. Ltd, Osaka:	26,5	8273
Sony Corporation, Tokyo:	10,1	8274
Teac Corporation, Tokyo:	12,7	8275
Victor Company of Japan (JVC), Tokyo:	17,9	8276
Nippon Gakki Corporation, (Yamaha) Hamamatsu:	27,5	8277
Sharp Corporation, Osaka	32,0	8280
Toshiba Corporation, Tokyo	31,0	8287
Chou-Denki Co. Ltd, Saitama	17,8	8288
Korean exporters:		
Inkei Corporation, Seoul:	14,4	8281
GoldStar:	26,1	8282
Samsung Electronics Co. Ltd, Seoul:	10,7	8283
Haitai Electronics Co. Ltd, Seoul:	19,4	8284

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

In cases where the exporting company is not the thame as the producing company the rate applicable to the producing company shall apply.

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

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

Article 2

The amounts collected or secured by way of provisional anti-dumping duty pursuant to Regulation (EEC) No 2140/89 shall be collected at the rates of duty definitively imposed where the definitive rate of duty is lower than the provisional antidumping 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 force on the day of 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, 16 January 1990.

For the Council

The President

M. O'KENNEDY