COMMISSION REGULATION (EEC) No 3262/90

of 5 November 1990

imposing a provisional anti-dumping duty on imports of audio tapes in cassettes originating in Japan, the Republic of Korea and Hong Kong

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Whereas:

A. PROCEDURE

(1) In November 1988 the Commission received a written complaint lodged by the European Council of Chemical Manufacturers' Federation (Cefic) on behalf of producers whose collective output of audio tapes on reels and in cassettes was stated to constitute a major proportion of Community production of the products in question. The complaint contained evidence of dumping of the products concerned originating in Japan, the Republic of Korea (Korea) and Hong Kong and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

The Commission accordingly announced, by notice published in the *Official Journal of the European Communities* [2] the initiation of an anti-dumping proceeding concerning imports into the Community of audio tapes on reels and in cassettes, falling within CN code 8523 11 00 and originating in Japan, Korea and Hong Kong and commenced an investigation.

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

(3) All the known Korean exporters, most of the Japanese exporters, some Hong Kong exporters and all complainant Community producers made their views known in writing. Submissions were also made by a number of importers.

(4) In addition, submissions were made by the Bureau Européen des Unions des Consommateurs (BEUC) in regard to the interests of the consumers in this proceeding.

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

(a) *Community producers*

AGFA Gevaert AG, Munich, Federal Republic of Germany;

BASF Aktiengesellschaft, Ludwigshafen, Federal Republic of Germany;

SUMA, Gien, France.

These Community producers are all members of Cefic.

(b) *Japanese producers/exporters*

TDK, Tokyo, Japan;

Maxell, Tokyo, Japan;

Fuji Film, Tokyo, Japan;

Denon Columbia, Tokyo, Japan.

(c) *Korean producers/exporters*

Goldstar Co., Seoul, Korea;

Saehan Media Co., Seoul, Korea;

Sunkyong Magnetic Ltd (SKM), Seoul, Korea;

Sungnam Ltd, Seoul, Korea;

Nakayama, Seoul, Korea [3].

(d) *Hong Kong producers/exporters*

Swire Magnetics (HK) Ltd, Hong Kong;

Yee Keung Industrial Company Ltd, Hong Kong;

Magnetic Enterprise Ltd, Hong Kong;

Forward Electronics Ltd, Hong Kong;

Tomei Magnetics Ltd, Hong Kong.

(e) *Importers in the Community*

Goldstar Deutschland GmbH, Ratingen, Federal Republic of Germany;

TDK Electronics Europe GmbH, Ratingen, Federal Republic of Germany;

TDK Recording Media Europe GmbH, Ratingen, Federal Republic of Germany;

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 11, 14. 1. 1989, p. 9.

[3] Documents investigated in TDK's premises in Tokyo.

Maxell GmbH, Ratingen, Federal Republic of Germany;

Denon Columbia GmbH, Ratingen, Federal Republic of Germany;

Fuji Film Ltd, London, United Kingdom;

TDK UK Ltd, Croydon, United Kingdom;

Maxell UK Ltd, London, United Kingdom;

Sunkyong Europe Ltd, London, United Kingdom;

Maxell Netherlands BV, Amsterdam, Netherlands;

Sunkyong Netherlands BV, Amsterdam, Netherlands.

(6) The Commission requested and received detailed written and oral submissions from the Community producers represented by the complainant, from the exporters named and from a number of importers and verified the information provided to the extent considered necessary.

However, one of the Community producers represented by the complainant, provided the information requested some two months after the time limit. Alleged internal management problems were given as an explanation for this delay. These were not accepted as a reasonable motive; in any case this information was disregarded since its acceptance would have been detrimental to the expeditious administration of this proceeding.

One of the Community producers represented by Cefic is a manufacturing subsidiary of another Community producer. These companies have therefore been considered as forming only one independent Community producer.

One Japanese exporter did not provide any information concerning normal value and restricted its submission to injury matters. The Commission has, therefore made its findings concerning dumping on the basis of the facts available, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88.

One Hong Kong company (Tomei Magnetics) shifted its total production of audio cassettes at the beginning of the investigation period to the People's Republic of China and closed its production facilities in Hong Kong; this company was therefore excluded from the scope of the proceeding.

(7) Because of the large number of interested parties involved and the numerous extensions of time limits requested by some of the exporters involved, the time for completion of the investigation exceeded a 12 month period.

(8) The investigation of dumping covered the period from 1 January 1988 to 31 December 1988 (investigation period).

B. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT AND COMMUNITY INDUSTRY

1. Product under consideration

(9) The notice of initiation of this anti-dumping proceeding concerns one product referred to as audio tape on reels or in cassettes. The investigation showed however that audio tapes on reels and in cassettes are actually two different products owing to their differences in physical characteristics and use.

(10) Audio tapes on reels are reels of magnetic tape of a large diameter. These reels are used in the manufacturing process of audio cassettes and are loaded in a certain length into a plastic cartridge which forms, when it is so loaded, an audio cassette.

Audio tapes on such reels are therefore semi-finished products, generally accounting for one third of the value of the finished product, the audio cassette. They are qualitatively essential because they contain the device for the recording of sound and are normally sold to winding companies or assemblers of audio cassettes.

(11) In contrast, the audio cassette is the finished product generally used by end-consumers in tape recorders or players in order to record or to play sounds from any acoustic origin.

(12) Although the complaint refers the audio tapes on reels or in cassettes as one product for the purpose of this proceeding, the investigation showed that their physical characteristics and use, channels of distribution, customer's perception and markets are different. It is thus necessary to consider them as two different products. This Commission Regulation concerns only audio tape in cassettes.

(13) As far as audio cassettes are concerned, there are various models differing in quality, in tape lengths, coating of the tape or design of the cartridge.

However all these models of audio cassettes have the same basic physical characteristics, application and use as well as the same consumer's perception and channels of distribution.

Any differences in quality, tape length, coating or design are actually outweighed by the similarity of characteristics and functions which give them a high degree of interchangeability from the consumer's viewpoint.

(14) In contrast, audio cassettes, which have important physical differences in size, components, and use, such as micro-cassettes, endless cassettes for answe-

ring machines, computer cassettes or digital audio tape (DAT) cassettes, are not products similar to the hereabove described audio cassettes and are therefore not covered by the scope of the present proceeding.

Therefore, for the purpose of this Regulation, audio tapes in cassettes mean audio cassettes of a length of 100 millimetres, a height of 64 millimetres and a depth of 12 millimetres and with a tolerance of ± 1 milimetre.

2. Like product

(15) The investigation showed that the various types of audio cassettes sold on the Japanese, Korean and Hong Kong market are, despite minor differences in tape length, coating, design or quality, largely similar between themselves and similar to the audio cassettes exported from these countries to the Community. Accordingly they have to be considered as like products.

Likewise, apart from the possible minor differences, the audio cassette exported from Japan, Korea and Hong Kong to the Community are alike in all respects to the Community-produced audio cassettes.

3. Community industry

(16) The Commission found three categories of producers of the like product in the Community during the investigation period:

— assemblers which are mainly manufacturing subsidiaries of the Japanese exporters and should therefore be excluded from the Community industry in accordance with Article 4 (5) of Regulation (EEC) No 2423/88, since they are related to the exporters subject to the present proceeding;

— independent assemblers;

— the Community producers on behalf of which the complaint was lodged.

Having excluded the related assemblers, which are subsidiaries of the exporters, from the Community industry, the complainants manufactured more than 80 % of the remaining total Community output of the like product and thus form a major proportion of the total Community production.

C. NORMAL VALUE

1. Normal value based on prices in the exporting country

(a) *General*

(17) In general, most of the audio cassette models of the exporters were sold in sufficient quantities and at prices which permitted recovery of all costs reasonably allocated in the normal course of trade on the domestic market. Accordingly, normal value was provisionally determined on the basis of the weighted average domestic prices of these models of audio cassettes. These prices were net of all discounts and rebates directly linked to the sales of audio cassettes.

Where the volume of such sales was less than the threshold established by the Commission in previous cases as 5 % of the volume of exports of these models to the Community, the Commission considered such sales to be insufficient to be representative and determined normal value on the basis of constructed value.

(b) *Discounts and rebates*

(18) Several Japanese and Korean exporters claimed that the normal value determined as hereabove should be reduced in respect of discounts and rebates granted to their customers on the domestic market.

(19) However, the deduction of such discounts or rebates from the weighted average domestic price was disallowed whenever insufficient evidence was provided to demonstrate a link between the rebate and the sales under consideration.

(20) One Japanese exporter requested in this respect that the value of various free items (i. e. index cards, photographs, ...) which are packed and sold with audio cassettes on the Japanese domestic market as an incentive to the consumer to purchase should be treated as a rebate and deducted from the domestic price of the products concerned. This claim was not accepted since, given the nature of the items concerned, their cost was regarded as a promotional expense for which no allowance may be made in conformity with the provisions of Article 2 (3) of Regulation (EEC) No 2423/88.

(21) Likewise, the total amount of rebates deducted from the domestic price was similarly adjusted for a Korean exporter since the rebate claimed was calculated on the basis of total turnover of this exporter and had thus to be reduced to the proportion of sales of audio cassettes only.

(c) *Models grouped together in series*

(22) One Japanese exporter has grouped together sales of similar models sold on the domestic market and has reported a weighted average sales price which did not correspond accurately to the prices of the specific models under consideration. This grouping of models in series was also applied to the information requested concerning profit margins, costs of production and model comparison tables.

The exporter concerned informed the Commission at a later date that this grouping of models and weighted average prices could not be relied upon to form accurate data for the calculation of domestic normal value, and submitted, after the verification visit had taken place, a document stating the individual costs of production of some of the particular models sold on the domestic market.

Since this statement of individual costs of production shows discrepancies with the costs of production reported by series and verified, and since this statement refers to models which have been sold in very low quantities and, some of them, at a loss, the Commission considered it appropriate for its provisional findings to disregard this information. Accordingly, normal value was based on the weighted average price of the models grouped in series which were sold in sufficient quantities in the domestic market.

2. Normal value based on constructed value

(a) *General*

(23) In all cases where there were either no sales, or insufficient sales, on the domestic market of audio-cassette model suitable for direct comparison to that sold for export to the Community, or where models suitable for direct comparison were sold in substantial quantities over the investigation period on the domestic market at prices which did not permit recovery, in the normal course of trade and during the investigation period, of all costs reasonably allocated, the normal value was determined on the basis of a constructed value of each model concerned.

This constructed value was established on the basis of the costs, both fixed and variable, in the country of origin, of materials and manufacture for the models sold on the domestic market plus a reasonable amount for selling, general and administrative expenses and profit, taken from the audited accounts of the exporter concerned and duly allocated on the basis of the turnover of the model under consideration.

(b) *Subcontracting*

(24) As regards two Korean exporters which exclusively act as subcontractors of Japanese companies for the production and export of audio cassettes to the Community and do not sell the like products on the domestic market in Korea, normal value was constructed by adding all costs, both fixed and variable, in Korea, of materials and manufacture, plus the weighted average of the selling, general and administrative expenses incurred and profit realized by all other Korean producers and exporters on domestic profitable sales of audio cassettes.

(25) Where the investigation showed that manufacturing costs or general expenses which should have been borne by the Korean subcontractors in respect of the manufacture of audio cassettes, were actually borne by the Japanese companies, those costs were added to those incurred in Korea.

(c) *Selling, general and administrative expenses*

(26) As regards the amounts of selling, general and administrative expenses, these were calculated with reference to the expenses incurred by the producer concerned on its sales in the domestic market of comparable models when the Commission was satisfied that they reflected the actual expenses for the models sold on the domestic market.

In all other cases, such expenses were calculated by reference to the expenses incurred by other producers on their profitable sales of the like product in the Japanese, Korean and Hong Kong markets respectively.

(27) One Japanese exporter claimed that financial revenues earned by a separate sector of the company responsible only for financial investments should be deducted from the costs of production of audio cassettes. The Commission, however, disallowed this deduction in order to reflect correctly the costs of the investments in the sector of audio cassette production. The financial revenues had indeed no links with the manufacture of audio cassettes.

(28) As regards allocation of costs, notably allocation of the above selling, administrative and other general expenses, these were normally allocated, where appropriate, in proportion to the turnover for each model under consideration. On any occasion that an allocation of these costs was not made on the basis of turnover, the amount to be allocated was calculated on the basis of the producer's accounting practice where the Commission was satisfied that the method was reasonable for the particular costs concerned.

(29) For one Japanese exporter, the investigation showed that the turnover reported for some of the models under consideration was not a reliable basis for the allocation of selling, general and administrative expenses, since this turnover involved sales of various other models. The Commission therefore

considered it appropriate to allocate these expenses by expressing the total selling, administrative and general expenses in the audio cassettes sector of the company, as a percentage of the total manufacturing costs in this sector. This percentage was then applied to the manufacturing costs and overheads to arrive at the cost of production of the models concerned.

(d) *Profit*

(30) As far as profit is concerned, this was calculated by reference to the profits realized by each of the producers concerned on its sales in the domestic market of comparable models, when the Commission was satisfied that they reflected the actual profits realized on these sales. Where insufficient profitable sales of certain models took place, the addition of profit to be included in the constructed value was based on the weighted average profits realized by other exporters respectively in Japan, Korea and Hong Kong on their profitable sales on the domestic market.

D. EXPORT PRICE

1. *General*

(31) The Commission verified, for the products of each exporter at least 70 % of all transactions during the investigation period. This quantity was considered representative of all transactions of these exporters during this period.

(32) With regard to exports by Japanese, Korean and Hong Kong producers directly to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the products sold.

(33) In other cases, exports were made to subsidiary companies which imported the products into the Community. In such cases, it was considered appropriate, in view of the relationship between exporter and importer, that export prices be constructed on the basis of prices at which the imported product was resold to the first independent buyer in accordance with Article 2 (8) of Regulation (EEC) No 2423/88.

Discounts and rebates were deducted from the price to the independent customer. Suitable adjustment was made to take account of all costs incurred between importation and resale and normally borne by an importer, including a reasonable margin for overheads and profit.

2. **Exchange rate**

(34) For the Korean exporters, all export transactions were reported in the Korean currency converted from the US dollars mentioned on the invoices. These exporters submitted that the Commission should use an exchange rate based on a yearly average in order to compute export prices. However, since the Korean currency was subject to significant fluctuations during the reference period the Commission considered it necessary to use for the computation of export prices the monthly average currency rate given to the exporters and not contested by them.

3. **Selling, general and administrative expenses**

(35) In cases where it was necessary to construct the export price and thus to make allowance for all costs incurred between importation and resale, these costs were allocated on the basis of turnover.

(36) The costs and turnover used for this purpose were generally those of the related importer's last available financial year and accordingly based on audited accounts. On any occasion that an allocation of sales, administrative and other general expenses was not made on the basis of turnover, the amount to be allocated was calculated on the basis of the exporter's available cost accounting data directly related to the sales in question.

(37) One importer, related to a Japanese exporter, claimed general and administrative expenses based on a turnover including treasury functions for other subsidiaries of the group. The Commission considered that this claim did not reflect the normal costs of that importer for the products under consideration and disregarded the part of the claim linked to the financing transactions.

(38) For several importers, the Commission also adjusted the export price for advertising costs corresponding to sales made in the Community but paid or reimbursed by the Japanese or Korean exporters associated with these importers, as per Article 2 (8) (b) of Regulation (EEC) No 2423/88.

4. **Profit**

(39) To arrive at a constructed net-free-at-Community-frontier export price, adjustments were also made for Community import duties and for a 5 % profit on sales turnover. The Commission based this 5 % profit margin on data asked for and received from independent importers of audio cassettes. It appeared that the average return on sales of independent traders in this sector during the investigation period could reasonably be estimated as 5 %.

For the purposes of these provisional proceedings, this percentage was accordingly applied to all sales of the related importers to their first independent purchasers in the Community.

E. COMPARISON

1. General

(40) For the purpose of a fair comparison between normal value and export price and in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88, the Commission took account of differences affecting price comparability such as different physical characteristics and selling expenses, where claims of a direct relationship of these differences to the sales under consideration could be satisfactorily demonstrated. All comparisons were made at ex-works level.

2. Differences in physical characteristics

(41) As far as differences in physical characteristics are concerned, normal value was adjusted by an allowance based on the effect of these differences on the market value of the product in the country of origin or export.

For this purpose, the differences in market value were determined on the basis of the significant physical differences in full cost of production terms, including the ratio of selling, general and administrative expenses and the profit margin which are normally included in the prices of the domestic models used for comparison.

3. Differences in selling expenses

(42) As far as differences in selling expenses are concerned, normal value and export prices were reduced in respect of differences in credit terms, warranties, commissions, salaries paid to sales personnel, packing, transport, insurance, handling and ancillary costs whenever evidence was given that these expenses were directly related to the sales under consideration.

(a) *Sales personnel salaries*

(43) As regards sales personnel salaries, several Japanese and Korean exporters had claimed costs for sales staff together with costs for other staff, namely personnel involved partly or totally in administrative tasks. The amount of the allowance granted was therefore estimated in each case on the basis of the facts available and limited to the salaries of personnel wholly engaged in direct selling activities. In this context, the deduction of sales staff expenses, such as car or telephone expenses, was disallowed since those expenses did not form part of their salaries, but were part of the general selling expenses of the exporters.

(b) *Export sales made in large quantities*

(44) With regard to the profit margin to be added to the cost of production one Korean exporter claimed that export sales of audio cassettes from Korea to the Community are made on an OEM (original equipment manufacture) basis and that therefore a reduced profit margin, taking account of this particular situation, should be allowed by the Commission. This claim was based on the fact that these export sales are made to very detailed Community customer specifications such as colour, design, materials, labels, packing, etc. In addition, they are essentially factory sales under the Customer's own brand name for which no distribution or advertising costs are incurred, and are made in large quantities.

(45) In establishing constructed normal value in previous cases the Commission has generally applied a reduced profit margin where export sales were made to such OEM customers in the Community.

The purpose of these purchases has generally been to complete or to replace the OEM manufacturing activity of the original equipment manufacturers because these products were offered at prices below their production cost in the Community. The imported products have then been resold in the Community. The imported products have then been resold in the Community under the OEM's established brand name, assuming the full responsibility of a manufacturer with regard to guarantee, warranties, after-sales service, maintenance, supply of spare parts and repairs. The product can thus be clearly identified as having been sold by the OEM and is distinguishable from all other products of the same kind.

(46) With regard to the importers of audio cassettes under consideration, insufficient evidence was given that the said importers purchased audio cassettes made to their unique specification and that they took upon themselves, partially or totally, selling activities and responsibilities similar to those of an exporter to the Community.

(47) Consequently, the Commission takes the view that these export sales from Korea to the Community are not sales made on an OEM basis and that there is no justification to allow in any way for differences in cost or profit.

(c) *Export sales made to exclusive distributors*

(48) One Japanese exporter claimed an adjustment for indirect selling costs to take account of an alleged difference in the level of trade because he claimed that a proportion of his sales in the Community was made to exclusive distributors buying in large quantities at prices lower than average, whilst his domestic sales were made directly to retailers.

The Commission examined this claim and came to a conclusion that it was not substantiated. Indeed, the evidence submitted was not sufficient to adequately identify either the export or the domestic level of trade. The exporter concerned could not show any clear distinction in quantities sold, any clear difference in pricing policy nor any consistent pattern of prices reflecting the distinct functions of the distributors compared with other independent customers. Consequently, it was not proved satisfactorily that its domestic and export prices were at different levels of trade and that the alleged difference affected price comparability.

F. DUMPING MARGINS

(49) Since export prices varied considerably, normal value for the domestically sold models of the exporters were compared with the export price of comparable models on a transaction-by-transaction basis. The preliminary examination of the facts shows the existence of dumping in respect of audio cassettes originating in Japan, Korea and Hong Kong on the part of most of the exporters investigated, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community. The margin of dumping varied according to the exporter, and the weighted average margins were as follows :

Japanese exporters :

Maxell :	80,20 %
Fuji :	64,20 %
TDK :	48,20 %
Denon Columbia :	44,50 %

Korean exporters :

Goldstar :	19,40 %
Sunkyong Magnetic :	3,10 %

Hong Kong exporters :

Yee Keung :	2,40 %
Magnetic Enterprise :	0,50 %
Forward Electronics :	0,43 %.

(50) For those producers that neither replied to the Commission's questionnaire, nor otherwise made themselves known, dumping was determined on the basis of the facts available in accordance with the provision of Article 7 (7) of Regulation (EEC) No 2423/88. In this connection, the Commission considered that the result of its investigation provided the most appropriate basis for determination of the margin of dumping and since it could create an opportunity for circumvention of the duty if the dumping margin for those producers was any lower than the highest dumping margin of 80,2 % for Japan and 19,5 % for Korea, it is considered appropriate to use these dumping margins for these groups of producers.

As far as Hong Kong exporters are concerned, it should be noted that the majority of Hong Kong exports of audio cassettes to the Community were found not to emanate from the exporters collaborating with the Commission's investigation.

In view of the gravity of this non-collaboration, it might be contemplated to base the finding of dumping in respect of these non-collaborating exporters either on the amount by which the average Hong Kong normal value exceeds the average export price as shown by the Community Eurostat statistics for 1988, or on the information contained in the complaint. However, owing to the relatively small amount of Hong Kong exports of audio cassettes to the Community shown in the official statistics for 1988 which, in addition, regroup audio cassettes with several other magnetic products, it was found adequate to attribute to this category of exporters the highest dumping margin found for Hong Kong, i.e. 2,4 %.

(51) In addition, one Japanese producer (Sony) did not reply to the part of the Commission's questionnaire relating to dumping and restricted the information provided to the questions relating to injury. It was considered that, in these circumstances, it would also create an opportunity for circumvention of the duty and would constitute a bonus for non-cooperation to hold that the dumping margin of this producer was any lower than the highest determined with regard to the Japanese producers which have cooperated in the investigation. For these reasons and in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88 it is considered appropriate to use the highest dumping margin for this company.

(52) As far as Saehan Media, Sungnam, Nakayama, Tomei Magnetics and Swire are concerned, no dumping was found.

(53) As far as the dumping margins found for Magnetic Enterprise and Forward Electronics are concerned and in view of the fact that those companies

exported small quantities of audio cassettes it was decided to treat these as *de minimis* and not justifying the adoption of protective measures.

G. INJURY

1. Cumulation

(54) The Commission considered that the effects of Japanese, Korean and Hong Kong imports had to be analysed accumulatively. Indeed, the exported products of each of the countries concerned were alike in all respects, interchangeable, and were marketed in the Community within a comparable period to compete with each other and with audio cassettes produced in the Community. Consequently, these exporters produced a similar and simultaneous effect on the Community industry which must be assessed jointly.

In addition, it should be noted that although the market share of the Hong Kong exporters which cooperated in the proceeding is small, it is not negligible.

2. Evolution of the Community consumption

(55) The size of the Community market has increased steadily, from 339 million units in 1985 to 439 million units in 1988, i.e. by about 29 %. Although audio cassettes are a relatively mature product, the market is not saturated and consumption is expected to increase. The United Kingdom market represents 31 % of the total Community market, the German market 29 % and French market 15 %. Thus these three countries together represent 75 % of total Community consumption.

3. Volume and market shares of dumped imports from Japan, Korea and Hong Kong

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

(56) The volume of audio cassettes sold by Japanese companies in the Community was 233 million units in 1985, 216 million units in 1986, 276 million units in 1987. For the investigation period (1988) the volume of these sales was 296 million units.

(57) The volume of audio cassettes imported from Japan was 142 million units in 1985, 113 million units in 1986 and 116 million units in 1987. For the investigation period (1988), the volume of dumped imports was 154 million units, i.e. an increase of 8 %, over 1985.

(58) In 1985, the Japanese exporters had already achieved a 69 % market share in the Community. Over the period 1985 to 1987, they have followed the increase of the global consumption and have retained their already large presence on the market, attaining a 68 % market share in 1988. Between 1985 and 1988, the market share of the dumped imports of audio cassettes from Japan decreased from 42 % to 35 %. However, it has to be noted that during this period the Japanese exporters have stepped up the diversification of their sources of supply of the Community market. In 1985, 61 % of the audio cassettes sold by them in the Community were manufactured in Japan, 22 % in Korea and 17 % in the Community, in 1988 only 51 % of the audio cassettes were manufactured in Japan, 17 % in Korea, 27 % in the Community and 5 % in other countries. This development was a result of the Japanese companies' efforts to build up their own production or assembly facilities within the Community rather than exporting directly.

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

(59) The volume of audio cassettes imported from Korea was 7 million units in 1985, 19 million units in 1986 and 25 million units in 1987. For the investigation period this volume of dumped imports was 51 million units, i.e. an increase of 628,5 %, compared with 1985.

(60) When the Korean producers started exporting audio cassettes on a large scale to the Community in 1985, they achieved a market share of 2 % of Community market. In 1986, this share increased to 6 % and in 1988 it represented 12 % of the total Community market.

(61) Although the Korean market share has not reached significantly high levels compared with the Japanese, it has to be taken into consideration that Korean imports are increasing at a very rapid rate. In addition, they are made up, for a significant part, of audio cassettes manufactured on behalf of Japanese exporters and consequently resold in the Community under a Japanese brand name.

(c) *Volume and market shares of dumped imports from Hong Kong*

(62) The volume of audio cassettes imported from Hong Kong was 4,9 million units in 1985, 4,5 million units in 1986, 5,5 million units in 1987, and 7 million units during the investigation period.

(63) The market share of all Hong Kong exporters remained almost constant between 1985 and 1988, increasing from 1,5 % in 1985 to 1,6 % in 1988.

(d) *Volume and market share of total dumped imports from Japan, Korea and Hong Kong*

(64) The volume of total dumped imports from Japan, Korea and Hong Kong has increased from 154 million units to 212 million units between 1985 and 1988, i.e. an increase of 38 %.

(65) The market share of all exporters which were found to have dumped the product concerned was 72 % in 1985 and had increased to 81 % in 1988. The market share of imports from countries found to have dumped increased from 45 % to 48 % over the same period.

4. Price of the dumped imports

(66) The Commission investigated the price undercutting practised by the Japanese, Korean and Hong Kong exporters during the investigation period. This was examined in relation to the sales of the exporters in the three major Community markets, United Kingdom, Federal Republic of Germany and France, where the exporters sold 75 % of the audio cassettes they exported to the Community.

The Commission first selected representative audio cassettes of the various categories marketed by the Community producers. The Commission then selected representative Japanese, Korean and Hong Kong export models in the same categories which were directly comparable with the Community producers' models.

However, owing to the specific features of the market, only a few models in the range of products of the exporters have been used for the comparison.

This selection was based on tables of comparison provided by both the Community industry and the exporters so that the exporters' selected models were commonly accepted as having at least the same or even more features than the Community industry models with which they were compared. The selected Community industry's models accounted for a major part of its sales in the Community.

The models so determined were compared on the basis of sales to the first independent customer in each of the various sales channels found (exclusive distributor, wholesaler, retailer). The average selling price of each Japanese, Korean and Hong Kong export model was thus compared in each of the Member States concerned with the corresponding figures for the appropriate Community industry models. Adjustments were made to take account of differences in expenses and profit margins where comparisons could not be made directly within the same sales channel. No adjustment for quality difference was claimed and the models were selected to be directly and fully comparable. Owing to geographic disparities the comparison was restricted, when it was necessary, to fewer Member States or to fewer models.

(67) The comparison outlined above showed results which varied considerably according to exporters :

— as far as the Hong Kong and Korean exporters are concerned, significant price undercutting was found to have taken place on the part of all the exporters whose models were investigated. The results for the two Korean exporters considered ranged from a minimum of 44 % to a maximum of 53 %. For the Hong Kong exporter concerned the average price undercutting was found to be 68 % ;

— as far as the Japanese exporters are concerned the weighted average price undercutting in the Community market, was found to be 6 %. This level reflected very different market conditions on a country-by-country basis. On the United Kingdom and French markets (which represent half of the Community market) where the Community industry had already a low market share, the price undercutting found was insignificant. By contrast, on the German market where the Community industry managed to retain a larger market share the price undercutting was on average 11 %.

5. Other relevant economic factors

(a) *Capacity, utilization rate, production and stocks*

(68) The actual production capacity of the Community industry rose from 110 million units in 1985 to 154 million units in 1988. However, over this period the Community companies which had supplied the Community market with products manufactured by their subsidiaries outside the Community have steadily decreased this production volume and it ceased completely during the investigation period, thus explaining the correlative increase of production capacity in the Community.

(69) Despite ceasing to supply the Community markets from overseas production, the Community industry's capacity utilization, which was 100 % in 1985, declined to 96 % in 1986, 90 % in 1987 and only 77 % in 1988. During this period, the stocks of the Community industry have remained constant (20 millions units in 1985, 19 million units in 1988) representing more than 20 % of the volume of audio cassettes sold.

(b) *Volumes and market shares of the Community industry*

(70) The number of audio cassettes produced by the Community industry between 1985 and 1988 slightly increased from 116 million units to 119 million units, while the quantity sold by the Community industry decreased by 8,5 %, from 94 million units to 86 million units.

This development is in clear contrast with the increase of total consumption in the Community (+ 29 %).

(71) On the basis of quantities sold, it was found that market share declined from 27 % in 1985 to 23 % in 1987, and sustained another substantial fall in 1988 to 19 %.

(c) *Price Evolution*

(72) A detailed investigation of audio cassette pricing in the Community was made by reference to the sales prices of the models sold by the Community industry and the exporters concerned. In terms of price erosion it was found that the prices of all audio cassette models decreased between 1985 and 1988 by 12 % on a weighted average basis.

(d) *Profitability*

(73) The Commission found that there was a negative return on sales of the Community industry from 1985 onwards. During the investigation period, the Community industry achieved slightly positive financial results and a global profitability of 1,89 %. However, this low profitability was only attained because, owing to the constant shrinking of their sales, the Community industry has striven to cut its costs and has focused its sales on a range of products which remain reasonably profitable. Accordingly, the positive return on sales for the investigation period does not reflect any improvements of profitability, but instead the constant decrease of its sales of non-profitable audio cassettes.

(e) *Employment and investment*

(74) As far as employment is concerned, 680 jobs have been lost in the Community industry between 1985 and 1988. This represents a 23 % reduction of the personnel employed in the Community industry over this period.

(75) As far as investment is concerned, the Community industry has reduced by 20 % its investments in the production of audio cassettes between 1985 and 1988.

6. Conclusion

(76) In order to determine whether the Community industry is suffering material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88, the Commisison took account of the following facts :

— imports of audio cassettes from Japan, Korean and Hong Kong have increased at a more rapid rate than the rate of global consumption, from 154 million units in 1985 to 212 million units in 1988, namely by 38 % ;

— the market share of the exporters found to have practised dumping increased by 10 % while the market share of the total dumped imports increased by 3 % ;

— the complainant producers' selling prices in the Community suffered a significant erosion between 1985 and 1988 ;

— Community producers were unable to increase, significantly, their production between 1985 and 1988 and their sales fell by 8,5 % over this period, despite an increase in total consumption of 30 % ;

— between 1985 and 1988 return on sales of the Community industry showed a constant negative trend, which has been improved in 1988 mainly because of the withdrawal of the loss-making models ;

— these rationalization measures involved a loss of employment in the Community of some 23 % of the audio cassettes workforce between 1985 and 1988.

(77) The abovementioned loss of market share, price erosion, insufficient profitability and employment losses, all lead the Commission to conclude, for the purpose of its provisional findings, that the Community industry has been suffering material injury within the terms of Article 4 (1) of Regulation (EEC) No 2423/88.

H. CAUSATION OF INJURY

1. General

(78) In assessing whether the Community industry has suffered the material injury through the effects of the dumped imports, it is appropriate to consider first the general market situation for audio cassettes in the Community.

In this respect it has been found that at the bottom end of the market, numerous low-cost Hong Kong and Korean producers compete to a very large extent on price alone, with products of comparatively standard technology and no significant difference in features and quality. The appearance and the rapid penetration of Hong Kong and Korean exports to the Community which between 1985 and 1988 have gained almost 14 % of the Community market could not fail to affect very negatively the sales volumes, sales prices and market shares of the Community industry.

On the other hand, the Community industry had simultaneously to cope with the increasingly prominent position of the Japanese exporters on the higher-quality segments of the market. There, competition switched more and more towards non-price elements, mainly brand name, marketing, features and styling. Indeed, during the investigation period Japanese exporters were leading this segment of the market where any significant change of this price, brand, features and marketing equilibrium for a specific model could profoundly after its attractiveness compared with another directly competitive model. Indeed, in this sector, prices are only one of the competition factors and competition is in particular focused on consumer's recognition obtained through promotion and marketing.

2. Effect of dumped imports

(79) In its examination as to whether the material injury suffered by the Community industry was caused by the effects of the dumping described in recitals 41 and 42, the Commission found that the increased influx of Japanese, Korean and Hong Kong imports coincides with a significant loss of market share and a reduced profitability on the part of the Community industry, together with price erosion, price undercutting and price suppression of the audio cassettes produced by the Community industry.

(a) *Effect of the volume of dumped imports*

(80) Between 1985 and 1988, the exporters found to have dumped during the investigation period increased their market share in the Community from 72 % to 81 %, while the market share of the Community industry simultaneously declined from 27 % to 19 %. This was rendered possible because the Community industry was under attack from two sides, on the one hand the impact of the Japanese exporters who have become leaders of the market, and on the other hand, the rapid penetration of the low-price Korean and Hong Kong exporters.

(81) Indeed, between 1985 and 1988, the Japanese exporters managed to keep their predominant market shares while diversifying their sources of supply: during this period, they increased their volume of sales sufficiently to retain their market presence at almost 70 % of the Community market; given that three of these exporters held more than 60 % of this market share, and that one of them had a share equal to one-third of the total, they deeply affect the trends of this Community market where they act as leaders.

Although these exporters have decreased their imports from Japan and have replaced them by imports from their production in other countries and a significant increase of their production in the Community, their dumped imports from Japan remained the main source of supply of the Community market; given their predominant market presence, these dumped imports affected the Community industry very negatively.

(82) As far as the Korean and Hong Kong exporters are concerned, they have penetrated rapidly the Community market between 1985 and 1988 thanks to a strategy exclusively based on low prices, and attained a market share of almost 14 % during the investigation period.

(b) *Effect of the price discrimination*

(83) Thanks to the high profits achieved on their protected domestic market, the Japanese exporters were able to finance large marketing and promotion expenditures in the Community, thereby imposing their brand image on the consumers and increasing their volume of sales so that they have become market leaders in all the Member States but one. In addition they strengthened their position of leaders through the cost advantages resulting from the economies of scale caused by the increased volume of their dumped sales. It should be noted in this respect that during the investigation period it was found that a significant part of the dumped imports from Japan were sold in the Community at prices below their costs of production.

(c) *Effect of the prices of the dumped imports*

(84) As a result, in the only Member State (Federal Republic of Germany) where the Community industry managed to retain a large market share, the Japanese exporters practised a significant price undercutting, up to a maximum of 18,5 %.

By contrast, in the other Member States (above all UK, France and Italy) where they already held a predominant market share, the Japanese exporters resold their dumped imports at prices which forced the Community industry to undersell in an attempt to retain its market share.

(85) In addition, the Community industry had to cope with the numerous exporters from Hong Kong and Korea which, through a large decrease in prices between 1985 and 1988, rapidly penetrated the Community market, and practised during the investigation period very considerable price undercutting; accordingly the Community industry was not able to meet this other source of unfair competition either.

(d) *Conclusion*

(86) Therefore, not only has the profitability of the Community industry been impaired by this forced reduction in prices and contraction of its volume of sales, but the evaluation by the consumer of the attractiveness of its products as well; indeed, they were increasingly considered of a lower quality than the Japanese products, since, in addition to the price decline, the Community industry lacked the financial means to defend its brand and its access to the well-reputed channels of distribution or to invest sufficiently in promotion and design of its products. This trend was accelerated by the reduction of economies of scale caused by the contraction of its sales.

(87) Moreover, while the Community industry was increasingly unable to defend its price, brand, product, marketing equilibrium (marketing mix) against dumped imports from Japan, it was not able either to meet the very low prices of the dumped imports from Hong Kong and Korea without definitively undermining the abovementioned equilibrium.

Therefore, the Community industry has been in a dilemma, and, with the exception of the chrome cassettes niche-market, has been increasingly acknowledged as a 'low-end' producer with no serious chance to compete either with the Japanese dumped imports on brand image, promotion and design or on prices with the Hong Kong and Korean dumped imports.

3. Effects of other factors

(a) *Management failures*

(88) Japanese exporters claimed in substance that the loss of market share suffered by the Community industry was the result of factors other than dumping.

(89) It was also alleged by some Japanese exporters that the Community producers are less cost efficient than themselves.

It should be pointed out in this respect that this cost efficiency is, for the Japanese exporters concerned, the result of economies of scale obtained by substantial sales which are dumped and often made at prices below the cost of production, as has been noted in recital 81.

(90) It was also alleged that the Community industry failed to have an appropriate marketing strategy, since its production and sales were focused on chrome audio cassettes, whereas the bulk of the demand in the Community was for ferro cassettes.

(91) However, no satisfactory evidence was given that the Community industry, in focusing on production and sales of chrome cassettes has applied an erroneous marketing strategy. Indeed, faced with the impairment of its sales volume and profitability caused by dumping they have rationally reacted by concentrating their activity on the niche-market of chrome audio cassettes where they enjoyed reasonable profits during the investigation period.

(b) *Effect of non-dumped imports and of sales of Community-produced audio cassettes*

(92) In addition to the effect of dumped imports, the Commission has considered the effect of non-dumped imports, as well as the effect of cassettes produced and sold in the Community by the manufacturing subsidiaries of Japanese exporters.

(93) In this regard, the Commission accepts that these other factors have had a detrimental impact on the Community industry. However, it has to be borne in mind that the latter was already in a weak position caused by the unfair trading practices of the exporters concerned and this made it more vulnerable to the effect of competition from non-dumped imports and Community produced cassettes.

4. Conclusion

(94) In conclusion, the volume of dumped imports, their market penetration, the prices at which dumped goods have been offered in the Community and the resulting loss of market share and loss of profit suffered by the Community industry led the Commission to determine that dumped imports of audio cassettes taken in isolation, have to be considered as causing material injury to the Community industry.

I. COMMUNITY INTEREST

1. General considerations

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

(96) While the Commission recognizes that the imposition of anti-dumping duties could affect price levels of the exporters concerned in the Community and subsequently may have some influence on the relative competitiveness of their products, it does not except competition on the Community market to be reduced by the taking of anti-dumping measures. On the contrary, the removal of the unfair advantages gained by the dumping practices is designed to prevent the decline of the Community industry and thus to help to maintain the availability of a wide choice of products and even to strengthen competition.

(97) The Commission has also considered and balanced the effects of anti-dumping duties on audio cassettes imported from Japan, Korea and Hong Kong in relation to the specific interests of the Community industry and other interested parties including consumers.

2. Interests of Community industry

(98) In view of the considerable material injury suffered by the Community industry, especially in terms of profitability and market share, the Commission considers that, in the absence of measures against dumped imports found to be the cause of injury, the disappearance of fully integrated production by the Community industry is quite probable within the short term. It should be noted in this respect that AGFA has recently announced its withdrawal from this sector and that its audio and video cassette production sector might be taken over by BASF.

(99) Any further shrinking of the Community industry would put at risk several thousand jobs in the industry itself, among its suppliers and in related industries.

(100) Moreover, this demise would also negatively influence the Community production of raw materials and other related magnetic goods.

Indeed, the technologies for audio cassettes and a whole range of other electronic products are related. Any loss of technological know-how in the audio cassette sector will mean a global loss of competitive edge in the whole industrial sector of sound recording and playing. Moreover, it would affect the development and profitable exploitation of other new technologies in this sector, such as, for example, digital audio tape (DAT) cassettes.

(101) In addition, the Community market for audio cassettes is by no means saturated and is expected to continue to expand. The Community industry has the ability to respond to an eventual increase in demand arising from re-establishing normal competitive conditions, and to take advantage of the efforts it has made since 1985 in rationalizing and restructuring its productive capacity. However, such prospects would be jeopardized if the dumping practised is not eliminated.

3. Interests of other parties

(102) Consumers' associations have argued that the imposition of duties would cause price increases and reduce the choice of consumers, and may harm other Community industries.

(103) As far as the consumers are concerned, it should be pointed out that they have no right to continue to take advantage of the effect of unfair trade practices. Anti-dumping duties are designed to prevent the disappearance of the Community industry and to preserve the choice of consumers. This interest will also be protected since the elimination of unfair competition should eventually lead to the strengthening of competitive conditions and a decrease in prices.

4. Conclusion

(104) In conclusion, after balancing the various interests involved, the Commission considers that the imposition of measures in the present case will re-establish fair competition by eliminating the injurious effects of dumping practices.

The Commission considers that it is therefore in the Community interest to impose anti-dumping measures in the form of a provisional anti-dumping duty.

J. DUTY

(105) When calculating the amount of duty adequate to remove the injury the Commission had to consider that this injury consists mainly of a considerable loss of sales and a reduced profitability : it is thus necessary that the measures taken allow the Community industry for the future to make a reasonable profit and to stem the fall of its sales.

(106) The level of profit of the Community industry is determined by two factors, the volume of its sales and the profit margin made on them. Accordingly, the provisional duty to be imposed should allow the Community industry to increase its prices and sales to the level necessary for it to cover its costs of production and make a reasonable profit.

(107) As far as their return on sales is concerned, the Commission considered that the adequate return on sales in this industrial sector and in normal business circumstances should be 12 % (See Council Regulation (EEC) No 1768/89 (1)). Given the present reduced sales level and low capacity utilization (see recital 68), such a profit rate applied to the current level of sales would, however, not be sufficient to eliminate injury. Therefore, the Commission had to take account of the global profit shortfall caused by the reduction of the turnover of the Community industry, as well as price depression. Consequently, it calculated this profit shortfall on the basis of the said target profit and a reasonable turnover for the Community industry (full capacity utilization). This amount put in relation with the current turnover resulted in a necessary price increase of 17,36 % for the Community industry. In order to enable the Community industry to raise its prices by this amount the exporters should increase their prices on average by the same rate.

(108) In order to take account of the differing contributions of each exporter to injury according to its own commercial behaviour in the Community, this average rate was then adjusted by the following factors :

— the relative price level of each exporter on the Community market determined from a price comparison, at cif Community frontier level, as in previous cases, of the dumped models of the exporters with the Community produced audio cassettes in direct competition,

— the relative volume of dumped imports of each exporter in relation to the other exporters.

(109) The result of this calculation, based on the provisional findings of the Commission, was an injury margin for each exporter, which represents its individual contribution to the total injury and enables the Community industry to increase its prices in order to re-establish a healthy situation.

(110) For those companies which neither replied to the Commission questionnaire nor otherwise made themselves known or refused full access to information deemed to be necessary by the Commission for its verification of the company's records, the Commission considered it appropriate to impose the highest duty calculated, i. e. 22,3 % for products originating in Japan and 19,4 % for products originating in Korea and 2,4 % for products originating in Hong Kong. Indeed, it would constitute a bonus for non-cooperation to hold that the duties for these exporters were any lower than the highest anti-dumping duty determined.

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

HAS ADOPTED THIS REGULATION :

Article 1

(1) A provisional anti-dumping duty is hereby imposed on imports of audio tapes in cassettes falling within CN code ex 8523 11 00 (Taric code : 8523 11*00) and originating in Japan, the Republic of Korea, and Hong Kong.

(2) The rate of the duty applicable to the net-free-at-Community-frontier price before duty, is set out as follows :

(a) 22,3 % for audio tapes in cassettes originating in Japan (Taric additional code : 8487), with the exception of imports which are manufactured and sold for export to the Community by the following companies. These companies shall be subject to the rate of duty mentioned hereunder :

Sony : 18,6 % (Taric additional code : 8483)

Maxell : 18,5 % (Taric additional code : 8484)

Fuji : 15 % (Taric additional code : 8485)

Denon : 14,7 % (Taric additional code : 8486) ;

(b) 19,4 % for the audio tapes in cassettes originating in the Republic of Korea (Taric additional code : 8488), with the exception of imports which are manufactured and sold for export to the Community by the following company. This company shall be subject to the rate of duty mentioned hereunder :

Sunkyong Magnetics Ltd (SKM) : 3,1 % (Taric additional code : 8489) ;

(c) 2,4 % for the audio tapes in cassettes originating in Hong Kong (Taric additional code : 8514).

(1) OJ No L 174, 22. 6. 1989, p. 1.

(3) None of the hereabove duties shall apply to imports of the products specified in paragraph 1 of this Article manufactured by the following Korean Companies :

Saehan Media Co. Seoul (Taric additional code : 8490)

Sungnam Ltd, Seoul (Taric additional code : 8490)

Nakayama Ltd, Seoul (Taric additional code : 8490)

Tomei Magnetics, Hong Kong (Taric additional code : 8515)

Swire, Hong Kong (Taric additional code : 8515)

Magnetic Enterprise, Hong Kong (Taric additional code : 8515)

Forward Electronics, Hong Kong (Taric additional code : 8515).

(4) For the purpose of this Regulation, audio tapes in cassettes mean audio cassettes of a length of 100 millimetres, a height of 64 millimetres and a depth of 12 millimetres and with a tolerance of ± 1 millimetre.

(5) In cases where the exporting company is not the same as the producing company the rate applicable to the producing company shall apply.

(6) The provisions in force concerning customs duties shall apply.

(7) The release for free circulation in the Community of the products originating in Japan, the Republic of Korea or Hong Kong referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice of Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Article 3

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

Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 5 November 1990.

For the Commission

Frans ANDRIESSEN

Vice-President