COMMISSION REGULATION (EEC) No 129/91

of 11 January 1991

imposing a provisional anti-dumping duty on imports of small-screen colour television receivers originating in Hong Kong and the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Whereas :

A. PROCEDURE

(1) In November 1988 the Commission announced, by a notice of extension published in the *Official Journal of the European Communities* [2], the initiation of an anti-dumping proceeding concerning imports into the Community of small-screen colour television receivers (hereafter referred to as SCTVs) originating in Hong Kong and the People's Republic of China and commenced an investigation. The product investigated falls within CN code 8528 10 71 according to which classification the maximum diagonal screen size taken into account for the purposes of the proceeding is 42 cm, while SCTVs with a screen size of 15,5 cm or less are excluded, as described in recital (7).

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

The initiation of this proceeding followed the opening in February 1988 of an anti-dumping investigation concerning imports of the same product originating in the Republic of Korea [3]. (That investigation led to the imposition, by Council Regulation (EEC) No 1048/90 [4], of a definitive anti-dumping duty on imports of SCTVs originating in the Republic of Korea.) In these circumstances, the present proceeding was initiated by a notice of extension, referring to the Korean proceeding.

(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.

All the known exporters, some importers, and the majority of Community producers represented by the complainant made their views known in writing. Submissions and representations were also made by the China Commercial Chamber of Audio & Video Products Exporters which represents the majority of Chinese producers/exporters.

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

(a) *Community producers :*

- Grundig AG, Fürth, Germany,
- Nokia-Graetz, Pforzheim, Germany,
- Philips International BV, Eindhoven , Netherlands,
- Séleco SpA, Pordenone, Italy,
- Thomson Consumer Electronics, Paris, France ;

(b) *Hong Kong producers/exporters :*

- Cony Electronic Products Ltd, Hong Kong,
- Hanwah Electronics Ltd, Hong Kong,
- Kong Wah Electronic Enterprises Ltd, Hong Kong,
- Koyoda Electronics Ltd, Hong Kong,
- Luks Industrial Co Ltd, Hong Kong,
- Tai Wah Television Industries Ltd, Hong Kong ;

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 288, 12. 11. 1988, p. 13.
[3] OJ No C 44, 17. 2. 1988, p. 2.
[4] OJ No L 107, 27. 4. 1990, p. 56.

(c) *Japanese exporters of SCTVs produced by Sino-Japanese joint ventures:*

— Hitachi Sales Corporation, Tokyo, Japan,

— Sanyo Electric Co Ltd, Osaka, Japan,

— Sanyo Electric (Hong Kong) Co Ltd, Hong Kong;

(d) *Importers in the Community:*

— Cathay, Abingdon, United Kingdom,

— Coelge Soc. Com. de Electronica GERAL LDA, Lisbon, Portugal,

— Electronics Nederland BV, Amsterdam, Netherlands,

— Hardman Isherwood Ltd, Wakefield, United Kingdom,

— Hitachi Sales Europe GmbH, Hamburg, Germany,

— Sanyo Deutschland Vertrieb GmbH, Neu Isenburg, Germany,

— Schneider UK Ltd, Northampton, United Kingdom,

— Sembodja Holland BV, Diemen, Netherlands,

— Thompson Cook Distributors Ltd, Washford, United Kingdom,

— YOKO International BV, Halfweg, Netherlands.

(4) The investigation of dumping covered the period 1 January 1988 to 31 October 1988 (the investigation period).

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

B. PRODUCT UNDER CONSIDERATION, ORIGIN FOR CUSTOMS PURPOSES

(a) Definition of product

(6) The products concerned by the proceeding are colour television receivers, with an integral picture tube, that have a diagonal screen measurement of more than 15,5 cm (six inches) but no greater than 42 centimetres (16 inches) (see rectial 7).

Their principal components are: a housing (normally of plastic material although wood may also be used), a control unit, a power supply unit, a tuner for receiving broadcast television signals, a series of circuits for converting received signals into audio and video output, a sound assembly including loudspeakers and a cathode ray tube (also commonly referred to as colour picture tube or CPT) with deflection yoke in which the electronic video output signals are converted into images on the screen. This last component is by far the largest and most costly item in the assembly of a complete television receiver.

(7) The notice of initiation of the Korean proceeding and the notice of extension initiating this proceeding cover all SCTVs with a diagonal measurement of the screen of not more than 42 cm.

A Hong Kong producer/exporter claimed that its exports of a model with screen measurement of five-and-a-half inches (approximately 14 cm) should be excluded from the scope of this proceeding because of the essential differences (features, usages) of the abovementioned model with the 14 inch (36 cm) models which are the most representative within the SCTV sector.

The Commission, having already considered similar claims in Regulation (EEC) No 1048/90 imposing definitive anti-dumping duties on imports of SCTVs originating in the Republic of Korea (recital (8)) came to the conclusion that the existence of significant differences of a physical nature (size, weight, degree of portability, types of usage, function with batteries) between the very small SCTVs five to six inch) and the larger ones (mainly 14-16 inch) allows it to be maintained that the very small SCTVs should be considered separately from the others, with which they are not in direct competition.

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

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

(b) Like product

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

Colour television receivers in general are marketed with a wide range of technical features. In the

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

In comparing Community models with Hong Kong and Chinese models sold on the Community market and in comparing Hong Kong export models with those sold in the Hong Kong domestic market, the Commission took account in general — and where model availability permitted — of criteria based on those features which submissions had shown to be important in consumers' perceptions of the product. These are the same features as have been set out in recital (8) of Commission Regulation (EEC) No 3232/89 [1] imposing provisional anti-dumping duties on SCTV imports originating in the Republic of Korea, and are the following:

— screen size,

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

— tuning control system — remote control, number of preselection available,

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

In order to avoid possibly misleading results, for example in undercutting exercises, the Commission did not compare with Hong Kong and Chinese exports the higher range of SCTVs produced and sold in the Community, which include such features as flat square screens teletext modules, and digital chassis. These models — although falling within the like product definition — were excluded from the comparison exercises because their more innovative and enhanced technical characteristics were not normally shared by the Hong Kong and Chinese models, at least during the reference period chosen.

The adaptation of television receivers to different broadcasting standards (PAL, Secam, etc.) or combinations of standards does not modify the basic technology employed or the consumer perception and usage of the product in the context of the like product determination, although it may give rise to price or cost differences.

(c) **Origin**

(10) The statistics for SCTV exports from the countries covered by the proceeding are unclear, and probably do not reflect accurately the distribution of assembly locations between the two territories involved. This conisderation appears to be supported by the finding that most of the Hong Kong producer/exporters carried out a part or the whole of their assembly operations in facilities owned and managed by them over the border in China.

During the investigation period Eurostat figures show 730 000 SCTVs of declared Hong Kong origin imported into the Community, while the Commission's investigaton showed that SCTVs of ascertained Hong Kong assembly exported to the Community in the same period totalled 495 000. On the other hand, information collected during the investigation suggests that 653 000 SCTVs manufactured in China were exported to the Community during the investigation period, while Eurostat figures show only 363 000 SCTVs of declared Chinese origin imported into the Community in the same period. Export statistics provided by representatives of the Chinese exporters also diverge widely from the Eurostat figures.

However, the specific Community rules of origin concerning colour television sets, which are contained in Commission Regulation (EEC) No 2632/70 [2], are framed in terms of criteria for which the location of assembly operations is not always a determining factor. The first condition of these rules requires a given proportion of value to be added in the country of origin through assembly operations and, where applicable, the incorporation of locally originating parts. Where this proportion cannot be reached, origin may be determined on the basis of the country of origin of a certain proportion of the value of the parts incorporated. In relation to these criteria, it was found that there was no production in Hong Kong of the major components used in SCTV manufacturing, such as colour picture tubes, fly back transformers, etc. Components were imported from several sources, among which figured Korea principally, and to a lesser extent, Japan.

Given the above, and the fact that it has not been possible for the Commission to verify the correctness or otherwise of the claimed origin during the course of the proceedings, it cannot be excluded that customs authorities, in the event of a check carried out on the basis of the abovementioned Community origin rules, may determine an origin which differs from that which is declared.

[1] OJ No L 314, 28. 10. 1989, p. 1.

[2] OJ No L 279, 24. 12. 1970, p. 35.

The Commission has therefore based its provisional findings on dumping and injury contained hereafter on the working assumption that the SCTVs investigated do have the origin that is declared to Community customs authorities, i.e. Hong Kong or Chinese origin.

C. DUMPING

(a) Normal value

(i) *Hong Kong*

(11) The great majority of export sales from Hong Kong to the Community were made on an OEM (original equipment manufacture) basis. In this case the importer, who is not a manufacturer of SCTVs, distributes (or sells to consumers through his own retail outlets) the product in the Community under his proprietary brand name. The few sales found on the Hong Kong domestic market were made either under the producers'/exporters' brand name or on an OEM basis. Both domestic prices and constructed values have been used to establish normal value according to the type of export transaction (own-brand or OEM) and the existence of sufficient domestic sales.

(12) For one Hong Kong exporter where profitable domestic sales made under its own brand name were found to exceed five per cent in volume of the sales of the equivalent export models in the same channel of trade, normal value has been established on the basis of the weighted average domestic prices to independent customers net of all discounts directly linked to the sales under consideration. The Commission has accepted the exporter's claim to disregard certain own brand domestic sales made through a different channel of trade (sales through a department store), since this trade channel was not comparable with that used for own-brand export sales.

(13) In the case of another Hong Kong producer/exporter where profitable domestic sales made through a related trading company on an OEM basis were found to exceed five per cent in volume of the sales of the equivalent export models also made on an OEM basis, normal value for these models has been established on the basis of the resale price of the related trading company to the first independent customer adjusted by the allowable selling expenses (see recital (23)) incurred either by the producer/exporter or by the related trading company. Commissions paid by the producer/exporter to the related trading company have not been taken into account as allowable selling expenses, since the two companies concerned form part of the same economic entity.

(14) For the own brand export sales of the same Hong Kong producer/exporter, which was found to sell only on an OEM basis in the domestic market, constructed values have been calculated. These constructed values have been based on cost of manufacture of each export model concerned plus average SG&A expenses incurred and the average profit margin earned on sales through the sales channel of this company on the Hong Kong domestic market.

(15) In the case of three other Hong Kong producers/exporters where all the export sales were made on an OEM basis and no or insufficiently representative domestic sales were found, normal value has been based on constructed values.

Constructed values have been calculated for each one of these companies on the basis of their own cost of manufacture. To these costs have been added the SG&A expenses incurred by the domestic OEM sales channel for SCTVs of the company mentioned above in recitals (13) and (14). The profit margin taken into account is five per cent; this figure has been considered reasonable in the light of the results of this same company's sales channel where in fact somewhat more than this level of profit was earned on the sales mentioned.

(16) For the export sales made on an OEM basis by the two remaining producers/exporters, which failed to show during the verification visits — in spite of claims to the contrary — that any of their SCTVs were effectively manufactured in Hong Kong, the constructed values used for normal value have been based on the best evidence available, i.e. on the cost of manufacture of equivalent export models of another Hong Kong producer/exporter whose manufacturing activity during the investigation period took place exclusively in Hong Kong. This producer was the larger and more efficient, with a far wider range of models permitting easy comparison, of the two exporters whose production has been carried out exclusively in Hong Kong during the investigation period. To these costs of manufacture the SG&A expenses and five per cent profit margin already discussed in recital (15) have been added.

(ii) *People's Republic of China*

(17) All the export sales from China to the Community were made on an OEM basis, with the exception of the export sales from the Sino-Japanese joint ventures, which were made under the brand names of the Japanese parent companies.

Normal values for Chinese models were established according to Article 2 (5) (b) of Regulation (EEC) No 2423/88 on the basis of constructed values established in Hong Kong for comparable models which were manufactured in Hong Kong and exported to the Community. Hong Kong has been proposed as the reference market economy country by China Commercial Chamber of Audio and Video Products Exporters, as well as by the legal representatives of the Sino-Japanese joint venture producers, and by the legal representative of an important importer of SCTVs from China. The constructed values have been calculated on the basis of all costs of manufacture plus SG&A and a five per cent margin of profit in the same way as they have been established for comparable export models in Hong Kong.

(18) The China Commercial Chamber of Audio and Video Products Exporters, having been informed of the Hong Kong models the Commission used as the basis for the calculation of constructed values for the Chinese export sales, reacted by proposing two other models which, according to its evaluation, are more appropriate for this purpose than those used by the Commission. The investigation showed that one of the two proposed models was probably not manufactured in Hong Kong but in China, and therefore it was not appropriate to establish normal value on such a basis.

The other proposed model, although it was manufactured in Hong Kong and resembles in technical characteristics the corresponding model retained by the Commission, was manufactured and sold in much smaller quantities and by a smaller producer. The Commission therefore considers that for the purpose of provisional determination the models it has selected are the most appropriate in order to establish normal value for the Chinese export sales.

(b) **Export price**

(i) *Hong Kong*

(19) All export sales were made either directly to unrelated importers or through unrelated trading companies in Hong Kong. In both cases the export prices have been established on the basis of the prices paid or payable for export.

(ii) *People's Republic of China*

(20) In the case of export sales made directly to unrelated importers or through unrelated trading companies, export prices have been established on the basis of the prices paid or payable.

(21) Where exports were made to importers related to Sino-Japanese joint venture producers/exporters, export prices have been constructed on the basis of resale prices to the first independent buyer, adjusted to take account of all costs incurred between importation and resale, including customs duties and a 10 % profit on turnover. This profit has been considered reasonable given the information available, i.e. the data collected from independent importers in this sector. The same profit margin was adopted in the proceeding against South Korea. Where cost allocations for SG&A have been necessary in constructing export prices, these generally have been made on the basis of turnover.

Discounts and rebates, given in connection with sales of a related importer to an independent buyer, have been taken into account in constructing export prices.

(22) Certain export sales of SCTVs manufactured by companies in China, which were invoiced through Hong Kong producers/exporters to which these Chinese companies were related, have been excluded from the scope of this proceeding because the investigation has not shown whether they have been imported in the Community as originating in Hong Kong or China. The investigation has shown, moreover, that these production facilities have not traded in their own right.

(c) **Comparison**

(i) *Hong Kong*

(23) For the purposes of a fair comparison between normal value and export prices, the Commission has taken account, where appropriate, of differences affecting price comparability, such as differences in physical characteristics and selling expenses, where a direct relationship between these differences and the sales under consideration could be satisfactorily demonstrated. Under the heading of selling expenses, for export sales of Hong Kong producers/exporters, adjustments have been made for differences in commissions, transport, insurance, handling, loading and ancillary costs, payment terms, warranty expense and salesmen's salaries. All comparisons of normal values with the export sales prices of Hong Kong producers/exporters have been made at ex-works level.

(24) In general, the matching of export SCTV models with comparable domestically sold or other models used as the basis of constructed values has been sufficiently close to limit the extent of the significant physical differences which had to be taken into account.

The adjustments for these differences, which mainly have been confined to differences in television broadcasting standards (PAL BG, PAL I, SECAM BG, SECAM L) and in the tuning system (remote control), have been estimated on the basis of their market value. Since these differences could not be found between the limited domestically sold models the Commission has estimated their market value either in full cost of production terms including the profit margin earned on domestically sold models or in market price difference terms.

(25) One Hong Kong exporter claimed, during the verification visit at its premises, an adjustment for credit expenses on the prices of domestically sold models. The calculation of this adjustment was based on accounts receivable and the short term borrowing interest rate of 1988. The Commission has examined this claim although it was not mentioned in the exporter's original submission. No relationship could be established between these credit expenses and the sales under consideration because all the domestic sales were made under cod (cash on delivery) terms, a fact which has been verified through the sales invoices. The Commission therefore cannot accept the claim.

(26) Another Hong Kong producer/exporter claimed that it did not employ any salesmen for export sales of SCTVs. The Commission's investigation at its premises showed that during the investigation period it actually employed two salesmen in selling SCTVs to the Community. The salaries of these two salesmen have been taken into account to calculate a relevant adjustment on the export prices.

(ii) *People's Republic of China*

(27) The Commission has no data or any other reasonable basis to estimate adjustments for selling expenses on export sales from China except for warranty expenses. The warranty expenses, i.e. free of charge spare parts or sets, have been identified in the Chinese export sales invoices which the Chinese exporters made available to the Commission, and therefore an adjustment on the export prices has been estimated.

The Commission has considered that under these circumstances all the comparisons between normal value and export prices for the Chinese export sales should be made at fob level.

(d) **Dumping margins**

(28) Normal values and export prices have been compared on a transaction by transaction basis for each of the exporters concerned. The preliminary examination of the facts shows the existence of dumping in respect of imports of SCTVs originating in Hong Kong and the People's Republic of China from all the exporters involved, the margin of dumping being equal to the amount by which the normal value, as established, exceeds the price for export to the Community.

The margins of dumping varied according to the exporter, and the weighted average margins, expressed as a percentage of cif frontier prices, have been as follows:

(a) *Hong Kong*

— Cony Electronic Products Ltd	3,19
— Hanwah Electronics Ltd	4,88
— Kong Wah Electronic Enterprises Ltd	3,13
— Koyoda Electronics Ltd	4,61
— Luks Industrial Co Ltd	4,17
— Tai Wah Television Industries Ltd	2,16;

(b) *People's Republic of China*

— China Great Wall Industry Corporation (Shanghai Branch)	17,49
— China National Electronics Import & Export Corporation	16,39
— China National Light Industrial Products Import & Export Corporation (Tianjin Branch)	16,88
— Fujian Hitachi Television Co Ltd	17,04
— Huaquiang Sanyo Electronics Co Ltd	7,55.

D. COMMUNITY INDUSTRY

(29) The cooperating companies manufactured in 1988 more than 50 % of the total Community output of SCTVs, which can be considered as a major proportion of the total Community production of the like product.

As recently as 1985 the cooperating complainant companies still represented some 68 % of total Community output.

The rapid reduction in the percentage between 1985 and 1988 can be explained by the important change in the composition of Community SCTV production which took place, with mainly Japanese-controlled production which has moved into the Community, as well as by the Community controlled production which has been relocated outside the Community, as described later.

E. INJURY

(a) Cumulation of injury findings

(30) The methodology used in the establishment of findings in the present proceeding essentially reflects that employed in the proceeding concerning Korean SCTVs as set out in Regulation (EEC) No 3232/89 and Regulation (EEC) No 1048/90. Consequently, when necessary, reference will be made to the proceeding concerning Korean SCTVs.

Injury findings related to the cumulated effect of imports from the Hong Kong and Chinese exporters investigated, and for which dumping has been established. This approach is justified by the homogenity of the exports in question: the SCTVs exported to the Community were similar to a large range of the Community products (and similar to all the Community products with which they were compared for injury measurement purposes). They competed both with each other and with the comparable Community products, and were sold through equivalent channels of distributions. In addition, the volume of imports from each of these exporting countries, taken in isolation, was significant.

It should also be noted that, although the injury findings presented here are amply justified by figures relating to the exports covered by the current proceeding on their own, these injury findings follow immediately upon those already established durnig the proceeding concerning Korean SCTVs referred to above. It must be remembered therefore that certain elements of the injury now presented have in fact been borne by a Community industry already weakened by the injurious dumping found during the Korean proceeding mentioned above. In order to illustrate this aspect of the economic reality confronting the Community SCTV industry, mention may also be made from time to time in the following recitals of the statistical information concerning SCTV imports from Korea during the period 1985 to 1988. These imports are considered in fact to have exercised a 'spillover' effect, in that they continued to have an injurious impact, which was not offset by anti-dumping measures, on the Community industry during the investigation period relating to Hong Kong and China.

(31) One Hong Kong exporter argued that imports of Hong Kong SCTVs should not be cumulated with imports from other exporters to determine injury and that Hong Kong SCTVs cannot have caused material injury to the Community SCTV industry.

The Commission's answer to this argument is that cumulation of imports, which is its standard practice in anti-dumping proceedings, has been justified by the considerations set out in the previous recital, while the volumes imported in the investigation period can in no way be described as negligible — either on a cumulated basis or when referring to imports from Hong Kong alone.

The argument in this case also assumed a lower rate of increase in SCTV imports from Hong Kong than from other investigated exporters, and a price level for the Hong Kong SCTVs which exceeds that of SCTVs from Korea and China. However, the Eurostat figures demonstrate a similar rate of increase in imports from Hong Kong, while their 1988 price level hardly exceeds the Korean and Chinese price levels of the same period.

(b) Volume and market shares

(32) Hong Kong imports into the Community increased, according to official Eurostat statistics, from some 54 000 units in 1985 to more than 856 000 units in 1988. At the same time Chinese imports amounted only to some 1 000 units in 1985 but in 1988 some 427 000 units were already imported into the Community. Thus combined imports from these two sources rose from 55 000 units in 1985 to 1 283 000 in 1988.

If Korean imports over the same period are taken into account: these grew from 87 000 units in 1985 to 1 083 000 units in 1988, and for all three exporting countries taken together the volume of exports to the Community therefore showed a progression from 142 000 sets in 1985 to 2 367 000 in 1988.

(33) In terms of estimated market shares, these volume figures represented a combined share for Hong Kong and China of some 1,21 % in 1985, growing to 16,88 % in 1988. Within these cumulated figures, the market share for Hong Kong has grown

from 1,21 % in 1985 to 2,62 % in 1986 while in 1987 it has increased heavily to 7,05 % and in 1988 it went up to 11,27 %. For China the market share was negligible in 1985 and still amounted in 1986 to only 0,17 % while in 1987 it rose to 3,35 % with a further increase in 1988 to 5,61 %.

(34) If Korean imports are taken into account, it must be noted that the Korean market share grew from 1,95 % in 1985 to 6,81 % in 1986, to 12,27 % in 1987, and to 14,25 % in 1988. Therefore if all three exporting countries are taken together, the combined market share shows a progression from 3,19 % in 1985 to 31,93 % in 1988.

Over the same period the Community industry has lost market share — declining from 69 % in 1985 to 39 % in 1988 — to almost exactly the same extent as the Hong Kong, Korean, and Chinese exporters have gained it.

(35) This decline was all the more serious since it took place against the background of rapidly increasing consumption in the Community. Between 1985 and 1988 Community consumption in this range of colour televisions increased by 70 % (from an estimated 4,5 million to 7,6 million sets) while the sales volume of the Community industry showed an increase of only 15 %.

(36) Some exporters raised the argument that if the production of the Community industry outside the EC had been taken into account the downward trend of the Community industry's market share would not have been so marked or might have been eliminated. This argument can be rejected by the following figures : while in 1985 the Community market share held by total Community industry sales (i.e. sourced from both Community and extra-Community production capacities) still amounted to about 80 %, this figure went down in 1988 to some 53 % or a loss of market share of about 27 %.

By comparison, the market share of the Community industry's sales sourced from productions units inside the Community went down by about 30 %. It must be stressed again that both figures also include the output of Japanese or other foreign-owned companies with manufacturing facilities within the Community, but in spite of this factor which complicates the presentation of the figures, it remains clear that the fall in the market share of the complainant industry in the Community is not just a statistical illusion, hiding a transfer of productive capacity into non-Community countries. Whether extra-Community production capacity of the complainant industry is taken into account or not, the latter's market share has decreased markedly, and a major factor in this decrease has been the rapidly growing market share taken by dumped imports from Hong Kong and China. This development is exposed even more clearly if imports from Korea are taken into account.

(c) **Prices**

(37) A detailed investigation of SCTV pricing in the Community was made by reference to the sales prices of the models in this market sector sold by Ferguson, Grundig, Philips, Nokia Graetz (formerly Standard Elektrik Lorenz) and Thomson. These companies together represent about 88 % in sales volume of the complainants which were represented and which cooperated.

(38) In terms of price level erosion, it was found that the prices of all SCTV models of the above companies decreased between 1985 and 1988 by 20 % on a weighted average basis. Although it is considered normal for prices of electronics items to fall over time for reasons of increased volume and technical improvements in production (even where no exceptional competitive pressure is present), these factors tend to be very limited in the case of a product such as colour television, which is positioned now at a mature point on its current technology curve, and the rate of price depression mentioned above exceeds that which would have been expected under conditions of normal competition.

(39) After taking account of this price erosion over the period 1985 to 1988, the Commission investigated, in addition, the price undercutting practised by the Hong Kong and Chinese exporters during the investigation period.

For the assessment of price undercutting, the Commission compared the prices of the major Community producers (i.e. Philips, Grundig, Nokia, Thomson, Ferguson and Seleco which represent about 92 % in sales volume of the cooperating firms) with those of the Hong Kong and Chinese exporters involved in the proceeding in five major Community markets (i.e. Germany, France, the United Kingdom, Italy and the Netherlands).

In order to make a model comparison the Commission selected representative Community models of the firms mentioned above. The selected models accounted for more than 50 % of sales of

comparable models of Community producers in the markets concerned. The Hong Kong and Chinese exporters dit not produce any 15 or 16 inch models at that time. Therefore only 10 and 14 inch models were compared.

For the comparison of these models the Commission established a ranking of criteria which could be considered as decisive from a consumer's point of view. The most important were screen size, feature type and the tuning control system.

On the basis of these criteria the Commission chose representative Hong Kong and Chinese models which were directly comparable with the selected European models.

Much care was taken in selecting only those Hong Kong and Chinese models which had at least the same features or even more features than the European models with which they were compared. These models represented a major proportion of the Hong Kong and Chinese sales in the markets concerned (i.e. more than 50 %).

The price comparison was made on the basis of sales to the first independent customer in the different sales channels (national distributor, dealer and OEM). The average selling prices of each exporter in each of these sales channels in the five Member States concerned by the undercutting exercise was then compared with the corresponding figures for the comparable Community models. The weighting was based on the sales volume of the comparable Community, Hong Kong and Chinese sales.

Adjustments were made to ensure comparability in terms of the transport and any other expenses included in selling prices of Community models, when Hong Kong or Chinese models were priced fob Hong Kong or Chinese port.

Similarly, adjustments were used to take account of differences in expenses and margins where comparisons could not be made directly within the same sales channel.

(40) The results of the comparison exercise outlined above showed price undercutting to have taken place on the part of all the Hong Kong and Chinese exporters whose models were investigated.

The overall average undercutting results, expressed at cif level, varied for the Hong Kong exporters between a minimum of 14,52 % and a maximum of 31,59 %, while for the Chinese exporters the minimum undercutting found was 13,13 % with a maximum of 25,03 %.

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

(41) One exporter carried out an Investigation concerning pricing on the Community market. He came to the conclusion that prices did not really differ. However, it must be mentioned that the prices taken for the price comparison were prices to independent customers to which exporters normally have no access.

The evidence is based mainly on prices to end users. These prices can be influenced by various factors such as dealer margins and therefore cannot be considered as reliable evidence.

(d) Other relevant economic factors

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

This relocation was determined initially by the need to reduce costs — notably of components and labour — on the part of the Community producers, in response to normal competitive pressures. What is most apparent from the statistics, is the marked acceleration of this relocation taking place since the onset of unfair competition caused by the surge in dumped import penetration which began in 1985. While in that year production of Community companies in extra-Community locations amounted to 16 % of their total production, this proportion had more than doubled by the end of 1987. This sharply increased production volume outside the Community was used for the most part by the Community companies to combat, with basic models, the new imports on certain Member States' markets under particular attack, where price depression and financial losses exceeded by far the already serious Community average levels. In 1988, although considerable transfers of production took place, the picture was mixed and the overall situation did not change. While one important Community producer transferred a further large proportion of its production to third countries (thus eliminating its SCTV production capacity in one of the larger Member States), another increased its production within the Community by a considerable percentage.

(43) Naturally, the relocation of production had a disruptive effect on employment in the Community. While employment was increasing until 1986, it declined in 1986/87 by 15 % or more than one thousand jobs.

In 1988 the employment level maintained the low position it has reached at the end of 1987.

(44) Capacity utilization in the Community industry attained nearly 86 % in 1985 and then declined to 79 % in 1986 and 1987 while in 1988 it went up again to 85 %.

As far as year-end stock level of finished goods are concerned, they did not show a real trend.

As was mentioned in the original proceeding concerning Korean SCTVs, television production capacity is very flexible in character. This is not only true in terms of location, but also in terms of its adaptability to changing market conditions. This adaptability has been used by the Community producers to keep their production capacities as far as possible in line with sales volumes.

Because of this, economic indicators such as that of capacity utilization and stock levels cannot be held to be really significant for injury determination in this case. These indicators do not clearly reflect the difficult market conditions, for which evidence must be sought in other parameters such as sales and output volumes, prices, employment and profits.

(45) Since 1983 profitability has shown a downward trend. Average industry returns on both sales and equity have been negative since 1984. Between 1985 and 1987 losses were kept stable, mainly because the financial results for SCTVs were influenced by a number of rationalization measures as described in the Regulation imposing provisional duties on imports of SCTVs from Korea, Regulation (EEC) No 3232/89.

However, in 1988 the downturn was dramatic. While in previous years the losses did not reach more than 4 % on average. In 1988 they went up to about 10 %. This was caused mainly by the huge drop in market prices in 1988. Although prices had already decreased by 12 % between 1985 and 1987 they continued to fall between 1987 and 1988 by 9 %.

While in previous years the losses could be stabilized by rationalization factors such as cost reductions, these remedies could no longer compensate in 1988 for a new price decrease. Thus, in 1988 there was no longer any complainant company which was found to be profitable.

For most of the Community producers the situation deteriorated in 1988 in such a way that drastic decisions such as further transfers to extra-Community production centres and closures in the Community were considered in order to stop a further decay.

(e) **Conclusion**

(46) In order to determine whether the Community industry is suffering material injury the Commission took account of the following facts :

— imports of Hong Kong SCTVs have increased from some 54 000 units in 1985 to more than 856 000 units in 1988 while Chinese imports increased over the same period from some 1 000 units to about 427 000 units. This extremely rapid increase is rendered even more serious if imports from Korea are taken into account, since total imports from Hong Kong, China and Korea combined increased from 142 000 units in 1985 to 2 367 000 in 1988 ;

— the market share of the Hong Kong imports rose between 1985 and 1988 by 10 % of Community consumption, while the market share of the Chinese imports had an increase of more than 5 % between 1985 and 1988. If Korean imports are taken into account, it can be seen that the combined market shares of Hong Kong, China and Korea on the Community SCTV market rose by some 29 % over this period. At the same time the Community producers' share fell by 30 % between 1985 and 1988 ;

— the complainant producers' selling prices in the Community suffered a significant erosion between 1985 and 1988. In addition, the average undercutting practised by Hong Kong exporters varied between 14 % and 31 %. The undercutting margin for the Chinese exporters amounted to between 13 % and 25 %. These margins are expressed at cif level ;

— Community producers were unable to increase their production and sales volume between 1985 and 1988 in the same way as the overall consumption for the same period ;

— while between 1985 and 1987 losses could be contained by a series of marketing and rationalization measures, they went up dramatically in 1988 mainly because of a new price decrease which could no longer be compensated for by any of the aforementioned remedies ;

— at present, taking into account the actual situation, further transfers to extra-Community production centres can be foreseen with a further loss of employment in the Community as a consequence.

(47) All these facts summarized above lead the Commission to conclude, for the purpose of its provisional findings, that the Community industry has suffered material injury within the terms of Article 4 (1) of Regulation (EEC) No 2423/88.

(48) Certain exporters have argued that a determination of material injury to the Community SCTV industry is not justified because four Member States' markets enforce quantitative restrictions on Korean, Hong Kong or Chinese exports. These four national markets together constitute a major proportion of Community SCTV consumption which enjoys a protection excluding the possibility of inflicting injury to a major portion of the Community industry.

As already stated in the proceeding concerning Korean SCTVs, this argument is unconvincing on two counts. In the first place neither Community nor international law forbids the application of further trade measures — such as anti-dumping or customs duties — to imports which are subject to quantitative restrictions. The application of these further measures if of course conditional upon the normal requirements for their use being fulfilled : in the case of anti-dumping duties that the imports in question are dumped and causing material injury, in spite of the operation of the restrictions. Second, the Commission was able to establish significant injury relating to the national markets concerned on the basis of the data obtained during its investigation.

F. CAUSATION OF INJURY

(a) Effect of dumped imports

(49) In assessing whether the injury suffered by the Community industry has been caused through the effects of dumping within the meaning of Article 4 (1) of Council Regulation (EEC) No 2423/88, the Commission found that the rapid increase of Hong Kong and Chinese low-priced imports coincides with an equally rapid loss of market share by the Community industry, price erosion and undercutting of the Community's SCTV models and heavily increased financial losses on the part of Community companies, together with an accelerated relocation of Community producers's assembly facilities outside the Community.

While in 1985 the cumulated market share of Hong Kong and China amounted only to about 1 % of the Community SCTV market, by 1988 it went up to nearly 17 %. Over the same period the Community industry's market share showed a decline of about 30 %, and although its selling prices decreased by 20 %, price undercutting by Hong Kong and Chinese exporters of up to 52 % was found by the Commission for 1988.

Given the predominant sensitivity of the consumer to considerations of price in the small screen sector of the Community colour television market, the low-priced imports from Hong Kong and China could not fail to affect very negatively the sales volumes, sales prices and consequently the profits of the Community industry. The appearance and rapid development of negative parameters in these areas — or the significant deterioration in, for example, Community industry profitability — correspond exactly in timing with the arrival and rapid penetration of low-priced dumped Hong Kong and Chinese exports in the Community SCTV market. The true significance of these deve-

lopments is rendered even clearer if exports from Korea over the same period are taken into account.

On the basis of these considerations, the Commission concludes the causal link between the dumped imports covered by the proceeding, and the injury suffered by Community industry, to be established.

(b) **Effect of other factors**

(50) The Commission has already found that material injury has been caused to the Community SCTV industry by dumped Korean imports in an earlier proceeding, and now finds that the dumped Hong Kong and Chinese imports in the present proceeding have also caused injury to the industry. However, it does not assume that all injury suffered by the industry in recent years has necessarily to be attributed to those imports.

As already mentioned in the proceeding concerning Korean SCTVs, it has been argued that the situation of the Community industry could not be considered completely satisfactory even in 1985. However, this does not contradict the fact that there has been a very serious deterioration in the Community industry's situation since 1985, and that Hong Kong and Chinese dumped exports played a large part in this mounting injury.

(51) Some Hong Kong exporters claimed that their individual market shares were minimal and that because of a late entry or increased selling prices they could not have caused injury.

As was stated already in the Korean proceeding, the exporters' market shares have to be considered together; the exporters sold a like product, in the same Community market sectors, through comparable sales channels. This view is confirmed by the judgment of the Court of 7 May 1987 in the Case No 255/84, Nachi Fujikoshi Corporation v. Council of the European Communities (ECR [1987] p. 1861), where it is stated that the injury caused to an established Community industry must be assessed as a whole, and that it is not necessary or possible to define separately the share of injury attributable to individual exporters involved.

(52) The argument which has been given greatest weight by the exporters alleges that the effects of the increase in volume and the low price of SCTV imports from non-investigated countries, principally from Taiwan and Singapore, have in fact at least been co-responsible for the injury suffered by the Community industry. The Commission has already examined the effects of imports from these sources for the Korean case.

In terms of Community market shares all exporters other than the Korean, Hong Kong and Chinese exporters covered nearly 28 % of total SCTV consumption in 1985. In 1988 this share went up to some 30 %.

As far as 1988 is concerned the Commission has again turned its attention to Singapore and Taiwan, two exporting countries whose exclusion from the proceeding is particularly discriminatory according to the exporters.

In the case of Singapore, the growth in export volumes to the Community is accounted for largely by the further relocation of Community production facilities. In this respect we should recall the assessment made in the Korean case, to the effect that this movement of production facilities was to be seen as a consequence of the injury suffered by the Community industry rather than its cause.

Indeed, this search by Community producers for competitive advantage in extra-Community production locations is one economically logical response to the damage caused by low-priced imports, and in no way has been found to contribute — as alleged by some exporters — to the injury suffered by the Community industry.

Furthermore, it can be shown than in 1988 the Singapore imports of SCTVs into the Community were on average 28 % higher in cif unit price value than Chinese imports, 26 % higher than Korean imports and 17 % higher than imports from Hong Kong.

In the case of Taiwan their volume sold into the Community, even if growing (also due largely to relocation by Community producers), is not growing as rapidly as, and has not reached the critical volume already attained by, Korea and Hong Kong in the first place and by China in the second place.

As was the case also in the Korean proceeding, the exporters have provided no evidence of dumping and injury for which these other exporting countries are responsible, according to their allegations. The Commission has no such evidence, and, having examined the situation of all other countries exporting to the Community, has no basis at present for including them in the present anti-dumping proceeding as demanded by the exporters. It should be noted, in addition, that even if these other exporting countries had caused injury, there is no indication that the injury caused by dumped imports from Hong Kong and China would thereby be rendered non-material.

(53) After taking account of the above factors, the Commission concludes that the injury caused by the combined dumped imports from Hong Kong and China, taken together in isolation from all other factors, is material. This position is reinforced if the injurious dumping of imports from Korea, established by an earlier proceeding, is taken into account. As already indicated, this conclusion does not imply that the Commission considers that all ascertainable difficulties of the Community industry should necessarily be imputed to this cause, rather than to competition between Community companies or to undumped imports from other sources. Reference is made to this point in recital (60) below, in considering the establishment of an appropriate injury threshold.

G. COMMUNITY INTEREST

(54) In the opinion of the Commission, the evaluation of Community interest with regard to the application of anti-dumping measures against Korean imports of SCTVs requires little updating and applies equally to imports from Hong Kong and the People's Republic of China.

(55) It must be recalled that, in the Commission's opinion, a continuing rise in unfair and injurious imports could lead to the elimination of Community SCTV production, with a consequent large loss of employment both in the SCTV and component manufacturing firms. On the other hand, it should also be noted that the purpose of anti-dumping measures is only to re-establish a situation of fair competition.

Attention was also drawn to two important factors operating in the case of this industry : that the loss of the SCTV market to Community firms would fatally weaken their marketing base in the overall colour television market. This would then undermine in turn the Community industry's technological base, given the interdependence in the consumer electronics industry between marketing strategy and constant technological innovation.

This simultaneous weakening in its colour television market and technological positions would be extremely serious for the Community electronics industry in general, in view of the relations between television production and that of other electronics products such as video-cassette recorders, and in view of the implications for common electronics components production in the Community. It would obviously be particularly serious for the Community colour television industry at the current stage in its development, with the introduction of high definition television possibly transforming its prospects and profitability over the next few years.

(56) Exporters have argued, as they did in the Korean proceeding, that measures would be contrary to the Community interest, in view of the restriction in choice and higher prices this would mean — it is alleged — for consumers.

Just as in the Korean proceeding, however, the Commission does not accept these allegations. Consumer choice will hardly be restricted, in view of the large number of sources available for this product.

In terms of prices, the Commission would expect their impact to be limited, in view of the modesty of some of the duties proposed, and in view above all of the fact that consumer choice, in a highly competitive market, will in practice remain unrestricted.

(57) Therefore, after weighing the various interests involved, the Commission considers, as in the original Korean proceeding, that the imposition of measures in the present case will not eliminate active price competition and will indeed establish fairer competition by eliminating the injurious dumping practices found to be used by the exporters. It is also still valid to point out that consumer interest in the long term is not necessarily served when lower prices based on unfair trading practices are used to gain market dominance leading to restricted competition and consumer choice.

The Commission concludes that it is in the interest of the Community to eliminate the injurious effects on the Community industry of the dumping which has been established. The measures proposed will contribute to the current viability and future development of that industry, and this benefit outweighs possible short term disadvantages for the consumer, in terms of perhaps higher market prices for a small proportion of the SCTV models available on the Community market.

H. UNDERTAKINGS

(58) The China Commercial Chamber of Audio and Video Products Exporters expressed its intention to offer an undertaking. The Commission, after consultations with the Advisory Committee, considers that the acceptance of undertakings is not recommended in this case, as has been stated in the original proceeding against Korea in Regulation (EEC) No 1048/90, and furthermore it is inappropriate to discuss in detail such a proposal at this stage of the proceeding. The situation of the colour television industry in China, the established links between Hong Kong exporters and Chinese production facilities, the frequent renewal of models and the high level of mobility of SCTV production operations are the basic reasons for which the Commission believes that undertakings

would be extremely difficult to monitor and are unlikely to restore fair competitive conditions in the Community market by eliminating dumping and its injurious effects.

I. DUTY

(59) In order to eliminate totally the injury sustained by the complainant Community producers it would be necessary for all undercutting, as described in recitals (39) and (40), to be eliminated. In addition, these producers would need to be placed in the position where they could achieve further price rises — at the same time regaining market share — in order to enable them to eliminate losses and to realize adequate returns on sales and assets. In the circumstances of this industry, and for the purposes of provisional determination, the Commission considers that an adequate annual return on sales allowing a balanced long term development would be 10 %. If these elements are combined, in a calculation of the price levels that would be necessary to remove all the above indicators of injury, it can be shown that price increases of Hong Kong and Chinese imports between 43 % and 67 % at the cif level for the different exporters would be required.

(60) The Commission considers however, as discussed in recitals (50) to (53), that it is inappropriate to impute the totality of the ascertained injury suffered by the complainant Community producers to dumped Hong Kong and Chinese exports. Indeed Article 4 (1) of Regulation (EEC) No 2423/88 requires that other possible causal factors of injury should not be ascribed to the dumped imports. The Commission therefore considers that for the purposes of provisional determination injury should be measured in terms of the price undercutting found to have been practised by the Hong Kong and Chinese exporters on the Community market, in the same way as it has been measured for the Korean exporters in Regulation (EEC) No 3232/89. The undercutting margins expressed at cif level in recital 40 represent the price increases at the Community frontier necessary to remove the injury defined in terms of undercutting.

(61) The dumping margins set out in recital (28) are lower than the injury threshold figures as defined in recitals (40) and (60), with the exception of one Sino-Japanese joint venture producer/exporter. It is therefore considered appropriate, in order to eliminate as far as possible the injurious effect of the dumped imports, that the amount of provisional duty to be imposed should correspond to the dumping margins found, except for the Sino-Japanese producer/exporter mentioned above, for whom the amount of provisional duty to be imposed should be fixed at the level of the injury threshold.

(62) 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 small screen colour television receivers with a diagonal screen size of more than 15,5 cm but no greater than 42 cm, whether or not combined in the same housing with a radio broadcast receiver and/or a clock, falling within CN code ex 8528 10 71 (Taric code: 8528 10 71 * 10), originating in Hong Kong and in the People's Republic of China.

2. The rate of duty shall be 4,8 % for products originating in Hong Kong (Taric additional code: 8500) and 17,4 % for products originating in the People's Republic of China (Taric additional code: 8506) of the net free-at-Community-frontier price before duty.

The rates of duty for products specified in paragraph 1 and manufactured and sold for export by the following companies shall be as set out below, expressed as a percentage of the net, free-at-Community-frontier price before duty:

	Rate of duty %	*Taric additional code*
(a) Hong Kong		
Cony Electronic Products Ltd	3,1	8494
Hanwah Electronics Ltd	4,8	8495
Kong Wah Electronic Enterprises Ltd	3,1	8496
Koyoda Electronics Ltd	4,6	8497
Luks Industrial Co., Ltd	4,1	8498
Tai Wah Television Industries Ltd	2,1	8499
(b) People's Republic of China		
China Great Wall Industry Corporation (Shanghai Branch)	17,4	8501
China National Electronics Import and Export Corporation	16,3	8502
China National Light Industrial Products Import and Export Corporation (Tianjin Branch)	16,8	8503
Fujian Hitachi Television Co., Ltd	13,1	8504
Huaquiang Sanyo Electronics Co., Ltd	7,5	8505

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

4. The release for free circulation in the Community of the products 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 to Article 7 (4) (b) of Regulation (EEC) No 2423/88, the parties concerned may make known their views and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the day following that of 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, 11 January 1991.

For the Commission

Frans ANDRIESSEN

Vice-President