COUNCIL REGULATION (EEC) No 2306/92

of 4 August 1992

imposing a definitive anti-dumping duty on imports of radio-broadcast receivers of a kind used in motor vehicles, originating in the Republic of Korea

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Whereas :

A. Provisional measures

(1) The Commission, by Regulation (EEC) No 313/92 [2] imposed a provisional anti-dumping duty on imports into the Community of radio-broadcast receivers of a kind used in motor vehicles (hereinafter referred to as car radios), originating in the Republic of Korea.

The Council, by Regulation (EEC) No 1483/92 [3], extended this duty for a period not exceeding two months.

B. Subsequent procedure

(2) Following the imposition of the provisional anti-dumping duty, a number of the interested parties made submissions to the Commission making known their views on the findings which were taken into account as considered appropriate. Those who so requested were also granted an opportunity to be heard by the Commission.

(3) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of the definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.

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

(5) Owing to the reasons indicated in recital 8 of Regulation (EEC) No 313/92, the investigation could not be concluded within the time period mentioned in Article 7 (9) (a) of Regulation (EEC) No 2423/88.

C. Product under consideration and like product

(6) The Commission described in recital 9 of Regulation (EEC) No 313/92 in detail the main characteristics of the product under consideration. Since no party concerned objected to this product description the Council confirms the Commission's definition of the product under consideration.

(7) In recitals 10 to 13 of Regulation (EEC) No 313/92 the Commission established that, despite the fact that the car radios in question varied in price at end consumer level and in features, they still had the same basic physical and technical characteristics which place them within the same category of the product in question. One importer objected to the provisional determination without, however, introducing any new arguments or evidence which could lead the Commission to come a different conclusion. The Council notes that even though car radios combine today a variety of additional features and components, the customs legislation of the Community, in conformity with internationally agreed customs rules, provides that a car radio is classified as such as long as these components and features do not change its essential character as a radio. The Council sees no reason to differ from this for anti-dumping purposes and therefore, confirms the Commission's view and considerations, that all car radios produced in the Community and in Korea and sold on the Community market were sufficiently alike to constitute a single range of products and a like product within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

(8) One Korean producer indicated that it had exported during the investigation period 1 May 1989 to 30 April 1990) a significant quantity of parts and sub-assemblies to a subsidiary company

[1] OJ No L 209, 2. 8. 1988, p. 2.
[2] OJ No L 34, 11. 2. 1992, p. 8.
[3] OJ No L 156, 10. 6. 1992, p. 1.

in the Community. The Commission, in verifying the information received, requested and was supplied, after the imposition of the provisional duty, with the details of importation of the product cncerned from the customs authorities of the importing Member State. These data and in particular the subsidiary company's import licence and customs declarations showed that these products were assigned to CN code 8527 21 90, covering finished products, in applying the General Rule 2 (a) of the preliminary provisions of the combined nomenclature [1]. Despite this and the fact that this CN code was specifically mentioned in the notice of initiation for this proceeding [2] the exporter failed to include these quantities in its reply to the Commission's questionnaire where it stated that it sold only some parts to its subsidiary and reiterated this several times during the proceeding. The Commission also considered whether there were any features specific to the models by which they would be distinguished from the product under consideration to an extent that they should properly fall outside the scope of the investigation. No such distinguishing features were apparent and the Commission, therefore, concluded that these imports fall within the scope of the investigation and that information relating to these imports was essential for the Commission to properly carry out the investigation.

The Council hereby confirms these conclusions.

D. Dumping

I. *Normal value*

(9) In its provisional findings the Commission determined that the normal value should be constructed on the basis of the manufacturing costs of the car radio models in question plus a reasonable margin for selling, general and administrative expenses (hereinafter referred to as SGA expenses) and profit, since the exporters which sold car radios on the Korean market did not sell any model comparable to the models exported to the Community in sufficiently representative quantities or in the normal course of trade. No exporter objected to these findings and the Commission, therefore established the normal value for its final determination on the same basis. The Council confirms this approach.

(10) Since no comparable models of car radios were sold on the Korean market in sufficiently representative quantities or in the normal course of trade, the margin for SGA expenses for three exporters, which had made representative domestic sales of other models of the like product, was calculated on the basis of the actual SGA expenses incurred on these sales. Since these expenses did not vary according to the brand of the radios no distinction was made between an exporter's own brand and other brand sales to the Community. For the exporters which had no or insufficient domestic sales the SGA expenses were calculated on the basis of the weighted average expenses incurred by the abovementioned three exporters on sales of the like product in Korea. No exporter disagreed with these calculations and the Council confirms the Commission's findings.

(11) The method used by the Commission in its provisional determination of the profit margin as set out in recitals 20 to 22 of the Regulation (EEC) No 313/92, was contested by certain of the exporters concerned. These exporters argued that the use of the margin of profit achieved in the sales to distributors or retailers is excessive and arbitrary due to the small quantities sold to these customers. They insisted that the profit margin should be calculated on the basis of the profit achieved on sales of car radios sold to car manufacturers for in-house use (for installation in cars during the assembly operation), as only these sales followed a similar pattern of trade as their sales to the Community.

(12) The Commission and the Council reconsidered these arguments. The Council, however, confirms the Commission's determination that sales to car manufacturers for in-house use were made to a different category of customer in terms of distribution function than the export sales, since these domestic customers did not carry out distribution functions or incur distribution costs for these sales. In contrast, the export customers all carried out distribution functions and incurred distribution costs with regard to the exports in question. This difference was also confirmed by an examination of the prices of domestic sales for the exporters concerned which showed that prices to car manufacturers were consistently lower when the product was destined for in-house use than when the product was sold to the car manufacturers for resale via related distribution companies, or when the product was sold by the car radio producers directly to independent distributors or retailers. In addition, the prices charged by the car radio producers for

[1] OJ No L 256, 7. 9. 1987, p. 15.
[2] OJ No C 114, 8. 5. 1990, p. 4.

the product when destined for resale either by distributors related to the car manufacturers or by distributors or retailers independent of them, were similar.

Several exporters argued that export quantities were larger than those used in the establishment of normal value but no evidence was presented during the investigation to show that a quantity difference had any effect on the profit rates achieved on the Korean market for the product in question. However, given the fact that sales quantities to distributors or retailers were in general relatively low, the Commission, in order to estimate a reasonable profit margin for sales in large quantities to distributors, based itself on the profit achieved on profitable sales to car manufacturers, but adjusted it upwards by an estimated margin of 3,9 %, due to the clear differences in the nature of these customers to those on the export markets. On this basis the weighted average profit calculated was 9,6 %. On the basis of the information available to the Commission concerning the car radio industry in general, this level was considered reasonable.

(13) The estimate of the differences in profit in selling to the different categories of customers was based on the difference in profit between sales to car manufacturers and sales destined for resale by the purchaser. This difference varied between 3,9 % and 9,8 % but the lowest figure was applied in this case to ensure that the adjustment was not excessive and that the comparison could be made as closely and as reasonably as possible at the same level of trade.

The Council confirms the Commission's considerations and the method used to establish the profit margin.

II. *Export price*

(14) No exporter contested the method of calculation of the export price as set out in recitals 23 and 24 of Regulation (EEC) No 313/92 and the Council, therefore, confirms these findings.

III. *Comparison*

(15) For the comparison of the normal value with the export price, due allowance was made in respect of differences in terms of delivery, terms of payment, warranties and salaries of sales personnel. These comparisons were made on ex-works level and at the same level of trade (see recitals 12 and 13 above).

(16) Two exporters disagreed with the method of adjusting for differences in credit terms in the provisional findings. They requested that this adjustment should be calculated on the basis of the average period of credit granted to its domestic customers for accounts and notes receivable and the normal interest applicable in Korea for short-term borrowing.

(17) This claim was rejected since adjustments for differences in conditions and terms of sale can only be granted to the extent that they affect price comparability. In respect of credit terms the price paid or payable can normally only be affected by a credit period which is agreed at the date of sale (i. e. date of contract or the date of invoice at the latest). Consequently, any costs resulting from an additional period of credit beyond the initially agreed period have to be considered as a general cost for the selling company since this condition was not included in the price at the date of sale and the buyer did not take such an additional period into account when he agreed to the price offered by the seller of the goods. The allowance for differences in credit terms was, therefore, only granted by the Council for the period of credit agreed between the seller and buyer of the goods at the date of sale.

Where no fixed period of credit was included in the conditions and terms of sale the Commission estimated the adjustment for these sales on the basis of 30 days of credit since these kind of sales were similar to consignment sales, where 30 days represent the normal period of credit granted to the buyer.

Since the normal value was established on the basis of cost of production, the adjustment had to be limited to the costs of interest for the exporter for these periods of credit based on the refinancing rate of the company.

The Council confirms this conclusion.

(18) A number of exporters objected to the fact that the Commission did not accept their claims that the export price should not be reduced by the amounts for insignificant adjustments. The exclusion of insignificant adjustments in accordance with Article 2 (10) (e) of Regulation (EEC) No 2423/88 refers to adjustments mentioned in Article 2 (9) (a) and 2 (10) (a) to (c). These adjustments can only be claimed for 'differences affecting price comparability'. An allowance was consequently only considered to be *deminimis* if the 'difference' between the allowance for the export price and the normal value was less than 0,5 % of the respective price or value and the Council confirms this conclusion.

IV. *Dumping margins*

(19) Normal value and export prices were compared on a transaction by transaction basis for each exporter which fully cooperated during the investigation. The final examination of the results of this comparison shows the existence of dumping in respect of car radios originating in the Republic of Korea, the margin of dumping being equal to the amount by which the normal value exceeded the price for export to the Community.

(20) For one exporter which did not submit essential information on export sales to the Community within a reasonable priod (see recital 8) and for which information concerning an appropriate normal value for the models could not be verified, the dumping margin was established for the quantities not reported in its reply to the Commission's questionnaire on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. In these circumstances, the most reasonable facts available were considered to be those established during the investigation and in order to avoid discriminatory treatment, the margin of dumping established for the exporters not cooperating in this proceeding was considered the most appropriate for these sales. For the exports verified during the investigation the dumping margin was established in the manner described in recital 19.

(21) The dumping margins varied according to the exporter, and the weighted average margin for each exporter, expressed as a percentage of cif value, free-at-Community frontier, was as follows:

— Carmen Electronic Co., Ltd,	3,4 %
— Daesung Precision Co., Ltd,	14,1 %
— Daewoo Electronics Co., Ltd,	4,7 %
— Goldstar Co., Ltd,	3,9 %
— Haiti Electronics Co., Ltd,	0,6 %
— Hyorim Co.,	10,6 %
— Hyundai Electronic Industries Co., Ltd,	10,8 %
— Inkel Corporation Ltd,	11,4 %
— Kolon International Co.,	8,9 %
— Osio Electronics Co., Ltd,	20,1 %
— Samsung Electronics Co., Ltd,	20,8 %
— Se Kyung Co.,	4,7 %
— Sung Moon Trading Co., Ltd,	18,5 %
— Tong-Hae Sil Up Co., Ltd,	8,7 %
— Tong Kook General Electronics Co., Ltd,	14,3 %
— Woojin Electric Co., Ltd,	15,1 %
— Woojin Industrial Co., Ltd,	15,1 %
— Woo Kwang Co., Ltd,	16,7 %
— Yung Tai Electronics Ind. Co., Ltd.	29,3 %

The Council confirms these margins and considers that the dumping margin finally determined for Haitai Electronics Co., Ltd can be regarded as *deminimis* and that there is no justification for taking account of them for the purpose of adopting any protective measures required.

(22) In the case of the exporters who failed to reply to the Commission's questionnaire or did not make themselves known during the investigation the dumping margin was determined on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. Since a large number of companies did not cooperate in this proceeding the Commission considered it appropriate to calculate this margin on the basis of the weighted average margin of three car radio models of the exporter with the highest dumping margin which were considered to be representative, so far as the Commission could judge, for car radios exported by non-cooperating exporters. On that basis the dumping amounted to 34,4 %. In this context the Council confirms the Commission's conclusion that assigning a lower dumping margin to these exporters would provide an incentive to avoid the payment of duties, constitute a bonus for non-cooperation and would not give appropriate recognition to those companies which fully cooperated in this proceeding.

E. Community Industry

(23) In recitals 33 and 34 of Regulation (EEC) No 313/92 the Commission came to the conclusion, that the three Community producers which were represented by the Association for Legal Auto-Radio Measures (ALARM) constitute the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88. No interested party objected to this and the Council confirms this conclusion.

F. Injury

(24) In its provisional findings, the Commission had concluded that the Community car radio industry had suffered material injury. It based its findings principally on the Korean exporters' extremely rapid increase in volume of exports and market penetration over a period covering 1985 to the end of the investigation period, the important price undercutting practised by the exporters during that investigation period and the price erosion resulting thereform for the Community industry which suffered significant losses in market share combined with a continuous decrease in profits.

(25) No new facts concerning these findings were submitted to the Commission after publication of Regulation (EEC) No 313/92. None of the data used by the Commission in its provisional findings was contested by the Korean exporters. However, some contested the evaluation made by the Commission of the evolution of Korean imports of car radios. They submitted that, according to the Commission's preliminary findings, these imports had decreased by at least five percentage points as from 1987 to the investigation period after having increased dramatically from 1985 to 1987. In their view, an essential indicator of injury according to Article 4 (2) of Regulation (EEC) No 2423/88 had therefore not been established.

The Council considers, however, that an increase in import values during the reference period is not an essential indicator of injury but only one of a number of indicators to be taken into consideration. In this context it notes that it was not contested by the Korean exporters that during the five-year period examined by the Commission for assessing the economic trends Korean imports of car radios increased by more than 180 % in volume and 12,0 percentage points in market share despite a slight decline in volume of these imports between 1988 and 1990, which was attributable to circumstances with which the exporters were necessarily faced as explained in recitals 36 and 46 of Regulation (EEC) No 313/92 and which caused difficulties, independently of any reason relating to the Community market, for the Korean exporters to continue to produce and export in still larger quantities during the investigation period.

(26) With respect to the provisional findings concerning the other factors relevant for the determination of injury as provided for in Article 4 (2) (c) of Regulation (EEC) No 2423/88, no other arguments or facts were presented to the Commission. Consequently, in addition to the confirmation that Korean imports of car radios showed a significant penetration on the Community market, the Commission's findings concerning the undercutting comparison as set out in rectial 38 of Regulation (EEC) No 313/92, and the state of Community industry as set out in recitals 39 and 42 of that Regulation, in particular as regards loss of market share combined with the significant erosion of profits suffered by the Community industry, are also confirmed by the Council.

(27) The Council therefore also confirms the conclusions of the Commission set out in recitals 43 and 44 of Regulation (EEC) No 313/92 that the Community car radio industry suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

G. Causation of injury by dumping

I. *Effect of dumped imports*

(28) In recitals 45 to 54 of Regulation (EEC) No 313/92, the Commission concluded that the significant increase of Korean low priced imports coincided with an equally rapid loss of market share by the Community industry, price erosion for the Community's car radio models combined with a heavily deteriorating profit situation for the complainant companies producing car radios in the Community.

(29) None of the arguments submitted by the exporters rebuts the coincidence in time between the flood of dumped Korean imports during the investigation period and the injurious situation sustained by the Community industry. As already stated in recital 45 of Regulation (EEC) No 313/92, the car radio market is very price sensitive and competitive. Therefore, imports of the product in question in substantial quantities at low and dumped prices had necessarily a depressive effect on the prices, market share and consequently on profitability of the Community industry and inevitably caused injury.

In addition, the effect of the low prices of the dumped products on the profitability of sales of the Community industry prevented it from utilising its production capacity in the Community while demand increased steadily and deprived it of the economies of sale which would have resulted from an increased sales volumes. All these elements show that the imports from Korea, through the effects of dumping, have had a direct and significant impact on the situation of the Community industry.

II. *Effect of other factors*

(30) Some Korean exporters supported by the Electronic Industries Association of Korea (EIAK) argued that the impact of the imports originating in People's Republic of China, Malaysia and Singapore was unjustifiably minimized by the Commission given their rising market shares and equally low or even lower prices and these factors were relevant concerning any decrease in sales, market share, production volume, capacity utilisation and employment of the car radio industry in the Community.

(31) In addition, the Korean exporters contested the Commission's position as explained in recital 49 of Regulation (EEC) No 313/92 according to which it is determined that the Community industry could not have contributed to its own injury. They argued that not all Community producers imported car radios from the three third countries in question and that the imports effected by certain Community producers might have caused injury to the other Community produce.

(32) The Commission considers and the Council confirms that a distinction has to be made between other third country imports brought in by the Community industry and those carried out by other companies. The Commission has already explained in its provision findings (see recital 48 of Regulation (EEC) No 313/92) that the imports effected by the Community industry accounted for approximately 50 % of all imports from the People's Republic of China, Malaysia and Singapore. However, these imports were effected by the Community industry in order to try to maintain its competitiveness in the Community car radio market. An intensified use of production facilities outside the Community by the Community industry is a legitimate and justified reaction of self-defence to the effect on its business operations of the imports of significant quantities of low-priced Korean products. While the commitment of the Community industry to continue producing in the Community was clearly apparent (see recital 57 of Regulation (EEC) No 313/92), its only possibility of avoiding an aggravation of its already deteriorating situation was to further diversify its production sources and to import products manufactured at lower costs as long as fair conditions of competition were not restored in the Community market. These imports replaced partly the sales of car radios which could have been produced and sold profitably in the Community had there not been the pressure from Korean imports for which dumping was found during the investigation period. Thus the real cause of any injury which may have resulted from these imports was the volume and the price levels of the dumped Korean imports. In this context, the Council confirms the Commission findings as stated in recital 49 of Regulation (EEC) No 313/92.

(33) With regard to the market share of the remaining imports from the three countries in question, it has to be noted that these only increased by 5,4 %, from 6,4 % in 1985 to 11,8 % in the investigation period, while that of Korean imports increased by 12 %, from 15,0 % to 27,0 % during the same period. No information concerning the prices of these imports was available. Therefore, even if the imports in question have had some impact on the level of prices on the Community market, it still remains true that the already mentioned differences with Korean imports allow the conclusion that the injury caused by the dumped imports originating in Korea, considered separately, must still be regarded as material.

(34) The Council hereby confirms all these findings and conclusions.

H. Community interest

(35) In its provisional findings, the Commission considered and weighed up the interests of the Community industry as well as those of end users (see recitals 55 to 59 of Regulation (EEC) No 313/92). It concluded that, unless a faire competitive situation is reestablished, the Community industry would have to cease production in the Community within the next few years with effect that its overall competitiveness in the consumer electronic sector would be further weakened owing to the loss in technical know-how in production and research and development in this sector. This development would not in the end be in the consumers' interest since any advantage in being supplied with dumped car radios might later disappear owing to reduced competition when the Community industry had to give up its production. The Commission, therefore, determined that it is, on balance, in the interest of the Community to grant protection to the Community industry against unfair competition from dumped imports.

(36) Following the imposition of the provisional duty no interested party objected to these findings. The Council therefore confirms these findings and concludes that it is in the Community interest to adopt anti-dumping measures to eliminate the injurious effects of the dumped imports. These measures should take the form of anti-dumping duties.

I. Duty

(37) As regards the level of duty to be imposed, the Commission determined that the increase to the export prices of each individual exporter, which would be required to permit the Community industry a reasonable return on sales of the like product should exceed the dumping margins as established. Consequently, the duty should correspond in accordance with Article 13 (3) of Regulation (EEC) No 2423/88 to the individual dumping margins as established in recital 21.

(38) Equally, in the case of the companies which failed to reply to the Commission's questionnaire or did not make themselves known during the investigation, the duty to be imposed should correspond to the dumping margin established for these producers, i.e. 35,4 %.

(39) The Council confirms these levels as finally established by the Commission.

J. Collection of provisional duties

(40) In the view of the importance of the dumping margins found and the seriousness of the injury caused to the Community producers, the Council considers it necessary that the amounts secured by way of provisional anti-dumping duties should be collected, either in full or to a maximum of the duty definitively imposed in those cases where the definitive duty is less than the provisional duty,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty of 34,4 % of the net, free-at-Community frontier price, before duty is hereby imposed on imports of radio-broadcast receivers of a kind used in motor vehicles, falling within CN codes ex 8527 21 10 (Taric code : 8527 21 10 * 10), ex 8527 21 90 (Taric code : 8527 21 90 * 10) and ex 8527 29 00 (Taric code : 8527 29 00 * 10), originating in the Republic of Korea (additional code : 8622).

These duties shall apply to broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, whether or not combined, in the same housing, with sound recording or reproducing apparatus, excluding apparatus capable of receiving also radio-telephony or radio-telegraphy.

2. The rate of anti-dumping duty in respect of the apparatus referred to in paragraph 1 and produced by the following undertakings shall be :

— Carmen Electronic Co., Ltd, Seoul (additional code : 8612)	3,4 %
— Daesung Precision Co., Ltd, Seoul (additional code : 8610)	14,1 %
— Daewoo Electronics Co., Ltd, Seoul (additional code : 8616)	4,7 %
— Goldstar Co., Ltd, Seoul (additional code : 8605)	3,9 %
— Hyorim Co., Seoul (additional code : 8611)	10,6 %
— Hyundai Electronic Industries Co., Ltd, Kyongju (additional code : 8608)	10,8 %
— Inkel Corporation Ltd, Seoul (additional code : 8607)	11,4 %
— Kolon International Co., Seoul (additional code : 8620)	8,9 %
— Osio Electronics Co., Ltd, Kyongju (additional code : 8619)	20,1 %
— Samsung Electronics Co., Ltd, Seoul (additional code : 8678)	20,8 %
— Se Kyung Co., Bucheon City, Kyongju (additional code : 8615)	4,7 %
— Sung Moon Trading Co., Ltd, Seoul (additional code : 8613)	18,5 %
— Tong-Hae Sil Up Co., Ltd, Seoul (additional code : 8614)	8,7 %
— Tong Kook General Electronics Co., Ltd, Seoul (additional code : 8606)	14,3 %
— Woojin Electric Co., Ltd, Seoul (additional code : 8609)	15,1 %
— Woojin Industrial Co., Ltd, Seoul (additional code : 8609)	15,1 %
— Woo Kwang Co., Ltd, Kyungsangbuch-Dou (additional code : 8618)	16,7 %
— Yung Tai Electronics Ind. Co., Ltd, Seoul (additional code : 8617)	29,3 %

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

3. The duties shall not apply to imports of the products specified in paragraph 1, manufactured by Haitai Electronics Co., Ltd, Inchon, (additional code : 8621).

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

Article 2

The amounts secured by way of provisional anti-dumping duty imposed by Regulation (EEC) No 313/92 shall be definitively collected at the rates of provisional duty applicable in the case of Kolon International Co., Seoul and at the rates of duty definitively imposed in all other cases.

Article 3

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

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

Done at Brussels, 4 August 1992.

For the Council

The President

N. LAMONT