COMMISSION REGULATION (EEC) No 313/92

of 4 February 1992

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

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 by the above Regulation,

Whereas :

A. PROCEDURE

(1) In May 1990 the Commission announced, by a notice published in the *Official Journal of the European Communities* (2), the initiation of an anti-dumping proceeding concerning imports into the Community of radio-broadcast receivers of a kind used in motor vehicles and originating in South Korea and commenced an investigation.

The products in question, hereinafter referred to as 'car radios', fall within CN codes ex 8527 21 10, ex 8527 21 90 and ex 8527 29 00.

The proceeding was initiated on the basis of a complaint lodged by Alarm, the Association for Legal Auto-Radio Measures, on behalf of producers said to account for more than 70 % of Community production of car radios. The complaint contained evidence of dumped imports of the said products originating in South Korea and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(2) The Commission officially informed the exporters and importers known to be concerned, the representatives of the exporting country and the complainants, and gave the parties known to be concerned the opportunity of making known their views in writing and of requesting a hearing.

(3) Of the 14 exporters referred to in the complaint, nine made their views known in writing while the others made no representations. Nine other Korean exporters made themselves known following initiation of the proceeding. A comparison between the Eurostat official statistics and the answers from the 18 exporters who replied to the Commission's questionnaire shows that the latter account, in terms of volume, for roughly 63 % of all the quantities exported from South Korea to the Community.

(4) The three producers represented by the complainant and a number of importers also made their views known in writing and/or requested a hearing. A trade association representing certain Community importers of the products in question, the Foreign Trade Association, made submissions. The Electronic Industries Association of Korea ('EIAK') made representations in support of the Korean exporters.

(5) The Commission investigated and verified all the information considered necessary for the purposes of a preliminary determination and carried out checks at the premises of the following :

(a) *Community producers :*

- Grundig AG, Fürth, Germany and Braga, Portugal,
- Philips, Wetzlar, Germany,
- Blaupunkt, Hildesheim, Germany and Braga, Portugal ;

(b) *Korean producers/exporters :*

- Goldstar Co., Ltd, Seoul,
- Tong Kook General Electronics Co., Ltd, Seoul,
- Inkel Corporation Ltd, Seoul,
- Hyundai Electronics Industries Co., Ltd, Kyongju,
- Woojin Electric Co., Ltd, Seoul,
- Woojin Industrial Co., Ltd, Seoul,
- Samsung Electronic Co., Ltd, Seoul,
- Daesung Precision Co., Ltd, Seoul,
- Hyorim Co., Seoul,
- Haitai Electronics Co., Ltd, Inchonl,
- Carmen Electronic Co., Ltd, Seoul,
- Sung-Moon Trading Co., Ltd, Seoul,
- Tong-Hae Sil Up Co., Ltd, Seoul,

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 114, 8. 5. 1990, p. 4.

— Se Kyung Co., Kyongju,

— Daewoo Electronics Co., Ltd, Seoul,

— Yung Tai Electronics Ind., Co., Ltd, Seoul,

— Woo Kwang Co., Ltd, Kyungsangbuch-Dou,

— Osio Electronics Co., Ltd, Kyongju,

— Kolon International Co., Seoel;

(c) *Importers in the Community:*

— Alpine Italia Spa, Milan, Italy,

— Daewoo Handelsgesellschaft GmbH, Frankfurt, Germany,

— Flamagás SA, Barcelona, Spain,

— Goodmans Loudspeakers Ltd, Havant, United Kingdom,

— Goldstar Deutschland GmbH, Willich, Germany,

— Großversandhaus Quelle, Fürth, Germany,

— Inkel Europe GmbH, Eschborn, Germany,

— Interconti Industrie Kontor GmbH, Oer Erkenschwick, Germany.

(6) The Commission also heard submissions from the complainant Community producers, the abovementioned exporters and a number of importers who had requested a hearing and verified all the information supplied in the course of the investigation to the extent considered necessary. One importer failed to submit a non-confidential version of his written reply so that it was not taken into account by the Commission.

(7) The investigation of dumping covered the period from 1 May 1989 to 30 April 1990 (the investigation period).

(8) This investigation extended for more than one year on account of the volume and complexity of the data gathered initially.

B. PRODUCT UNDER INVESTIGATION AND LIKE PRODUCT

I. Product under investigation

(9) The products covered by this proceeding are receivers of radio broadcasts from broadcasting stations, not capable of operating without an external source of power, of a kind used in motor or self-propelled 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. Their basic function is to receive and process audio signals. They are powered by an external source of electricity, normally generated by the vehicle in which they are installed. When connected to one or more loudspeakers, which are not covered by this proceeding, the signals received and processed can be heard.

The basic components of any car radio are a housing, a power supply unit, a tuner for selecting audio signals from the broadcasting stations on one or more frequency bands, circuits for processing the said signals, essentially an amplifier and other circuits controlling optional additional functions such as, *inter alia,* a fader for controlling the tone or balancing the sound in the case of stereo receivers, a radio decoder system and a system for memorizing a number of stations. Stations may be selected by means of manual tuning or digital tuning and they may be located by means of an analogue or digital display.

Car radios may be combined with equipment for recording or reproducing sound such as an audio cassette player, which can itself possess particular features such as, *inter alia,* an auto-reverse system for automatically reversing the tape, or a Dolby noise reduction system, and/or a compact disc player. Such products, whose main feature is that they receive radio broadcasts, fall within the category of the products under investigation on condition that all the equipment is contained in the same housing. Car radios which are also capable of receiving radio-telephony or radio-telegraphy, which were excluded when this proceeding was initiated since, in such cases, they possess different basic features, do not accordingly fall within the category of the products in question.

II. Like product

(10) As regards the definition of like product within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88, it was found that car radios produced in the Community are manufactured using basic technology which is comparable to that used to produce equipment sold in Korea and exported to the Community and that they possess common basic physical and technical characteristics.

This approach is in line with the consumer's perception of the product. Apart from their differing features, appearance or reception quality, all the car radio models on the market have the same basic functions and possible uses, namely the

reception of radio broadcasts, whether or not combined with any other sound-reproducing apparatus, which enables them to be regarded as boadly interchangeable from the consumer's point of view even if, of course, the degree of interchangeability is less where there are greater differences as regards equipment and features.

As was pointed out in recital 9 above, car radios are marketed with a wide range of technical features. The differences between them have, however, not caused the Commission to take the view that a clear distinction could be made between the various car radio models, resulting in the definition of a number of categories of like products. There is no clear dividing line enabling classification by specific groups of models within the range of products manufactured using an identical process, distributed through the same marketing channels and not distinguished in any way by the manufacturers in their accounts.

(11) A Community trade association representing the interests of the retail trade in regard to supplies from abroard claimed that car radios manufactured and sold in the Community by the Community industry and car radios imported from Korea were not like products, on the ground that the latter were very cheap products whose parts, quality and clarity of reception were inferior to those produced and sold by the Community industry. These arguments are broadly in line with those of most of the exporters, who made a distinction between like products for the different market segments, based on 'high end' and 'low end' products, the distinction depending, according to the circumstances, on an assumption that different markets exist according to the features of the products or differing prices.

(12) These arguments cannot be upheld. Even if Korean models and Community models may have different specifications, this does not alter the fact that all the models concerned possess basic common physical and technical characteristics which place them within the same category of like product. Furthermore, no objective criterion was offered in support of these arguments that would have made it possible to distinguish between the products in question according to their basic characteristics and use. Any classification of these products into various separate categories or groups of articles would be arbitrary, open to circumvention and unworkable since what is at issue here is, in fact, a complete range of one and the same product. In any event, the arguments put forward actually relate to a past situation on account of the technical progress achieved by the Korean exporters during the years prior to the investigation period. Indeed, it was possible to establish that the models exported during the investigation period from Korea to the Community by the exporters who cooperated incorporate, in many cases, equipment analagous to that of the European models. They were designed and produced using technology comparable to that used in the Community, in many cases on the basis of licensing agreements concluded with third country producers. Secondly, the Community producers also make models based on simplified technology, comparable to the exported models, and these form an integral part of a range of models offered for sale on the Community market by the Community industry.

Any differences in regard to quality can, moreover, have no effect on the definition of the like product and must, if necessary be taken into account when prices are compared.

(13) In conclusion, the Commission took the view that all car radios produced in the Community and in Korea and sold on the Community market are sufficiently alike to be regarded as constituting a single range of products for the purposes of this proceeding and as a like product within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

C. DUMPING

(a) Normal value

(14) In order to determine normal value, the Commission first considered whether the models sold by the Korean exporters who had made sales on the dometic market were like products with features that were sufficiently akin to those of the exported models to allow a valid price comparision to be made without its being necessary to make adjustments that were so great or of such complexity that it would be impossible to make a reasonable estimate of the value of any differences in their physical features. An initial selection of the said models was made on the basis of a list of fourteen specifications corresponding to the principal technical features. Subsequently, and, in particular, during the course of the one-the-spot investigation, checks were made on whether the external and internal structure of the preselected products sold in Korea and for export allowed a reasonable comparison to be made between prices on the domestic market and export prices.

On the basis of these criteria, the Commission reached the preliminary conclusion that four of the six Korean exporters who had made sales on the Korean domestic market had sold such models as were comparable to one or more of the exported models.

(15) One exporter held by the Commission not to have sold a comparable model on the domestic market claimed that the only model which he had sold in Korea on the occasion of a single transaction during the investigation period was, in fact, comparable to two models exported by him, on the basis of the fourteen specifications used by the Commission to select comparable models. He claimed that the Commission had not made a reasonable decision on the ground of a lack of comparability, by reason of differences in external appearance and, in particular, internal structure, of which the consumer would be unaware.

Transmission by the Commission, however, of a list of specifications for the purposes of preselecting comparable models could not be regarded as laying down all the selection criteria before specific examination of individual proposals made on that basis by each producer/exporter.

Where models are selected in order to compare prices, account must be taken of those factors which may affect the build-up of the said prices, in relation to the buyer for whom the product is intended, such as, *inter alia*, the internal structure and the components of the products in question. The products sold in Korea and those sold for export to the Community were intended for customers who were car manufacturers and/or distributors, all of whom take full account of the internal structure of the said products.

Despite the similarity of the models in question as regards the correlation between one or other specification of the fourteen that were listed, the said models appeared dissimilar both from the standpoint of their external appearance and their internal structure.

(16) The Commission then considered whether the domestic prices of the comparable models selected as described above could be used to determine the normal value. This was impossible. In two cases, products were sold at transfer prices to a car manufacturer related to the producer so that the said prices could not be used. Domestic sales of comparable models to independent buyers either failed to exceed, in volume terms, 5 % of sales of products exported to the Community so that they were held to be insufficiently representative, in line with the Commission's practice in previous cases, or were sufficiently representative but made at a loss, in other words the average prices of the models in question, during the investigation period, were lower than the production costs.

(17) In these circumstances, since it was impossible to use any of the prices charged on the domestic market, normal value was constructed, provisionally, in all cases on the basis of the costs in respect of materials and manufacture of each exported model, plus an amount for selling, administrative and other general expenses (hereinafter referred to as 'SGA expenses') and a margin for profit.

(18) It nevertheless proved necessary, to enable a valid comparison to be made with the export prices, to take into account the nature of the domestic sales as compared with that of the export sales. All the latter were made to importers acting as distributors who resold either to wholesalers or retailers and only in certain rare cases to car manufacturers. No export sales were made directly to Community car manufacturers.

In contrast, on the Korean market, most domestic sales to independent buyers were made to car manufacturers. The rest of the sales were made to distributors who, like the importers in the Community, sell to wholesalers and retailers. In the case of the sales to car manufacturers, a significant difference in price structure and quantities sold was found, by comparison with the sales made to distributors. The investigation showed that general expenses, excluding direct selling expenses, did not appear to differ depending on the type of customer and sales volume and that the price difference accordingly lay in the lower profit margins on sales to car manufacturers. The latter are final consumers whose commercial function differs from that of distributors. As a result, in determining the normal constructed value corresponding to a level of trade comparable to that of the export sales, the profit margin to be added to the cost of production was determined provisionally by reference to the level of profit made on sales on the Korean domestic market to independent distributors.

(19) SGA expenses were calculated by reference to those incurred by each of the producers/exporters concerned who had made sales of the like product on the domestic market in representative quantities to independent buyers, in other words where such sales were equal to not less than 5 % of the total quantities imported. In the case of Korean producers/exporters who had not made representative sales of the like product in Korea, SGA expenses were calculated by reference to the average expenses of the same kind incurred by the other Korean producers/exporters of car radios who had made sufficient sales of the like product on the domestic market.

(20) As regards the profit used to construct the normal value, where producers/exporters had sold other car radio models to distributors in Korea in representative quantities, the average profit margin corresponding to that type of sale was used.

In the case of exporters who had sold like products to car manufacturers on the domestic market, the profit margin on such sales was adjusted on the basis of an average percentage reflecting the differing profit margins secured through the two types of sale on the domestic market. The percentage was determined by reference to the sales of producers/exporters who made the two types of sale on the Korean domestic market during the investigation period.

Where a producer/exporter had not sold like products in Korea, the average profit margin secured by the producers/exporters who had sold like products to independent distributors in Korea was used.

(21) A number of Korean exporters, together with the EIAK, objected that the method used by the Commission was incorrect since it did not take account of differences between the quantities sold to distributors in Korea and the quantities sold in the Community.

The said exporters claimed that it would be fairer to compare the sales made to car manufacturers since, in particular, the quantities were more comparable to the export sales.

(22) The Commission was not able to accept these arguments. Any fair comparison requires prices to be compared at comparable levels of trade. The functions of the Korean distributors and the Community importers are comparable while the function of car manufacturers is totally different. Prices must therefore be compared at distributor level. As regards the argument concerning the difference between the quantities sold at distributor level on each of the two markets which, it was claimed, resulted in differing economies of scale, it must be borne in mind that the normal value of the models sold for export was determined on the basis of the manufacturing costs for the said exported models. This method accordingly takes full account of the economies of scale secured with the exported products which, moreover, were necessarily greater than those secured through the sales on the domestic market since the quanities sold for export were significantly greater than those sold in Korea. As far as selling expenses are concerned, all differences in direct costs were taken into account (see recitals 26 *et seq.*). With regard to general expenses, it was found that there was no difference according to the nature of the customer.

Lastly, with regard to profits, the investigation clearly showed that they vary depending on the commercial function of the customer concerned. As a result, it would be wrong to use, in respect of the sales to distributors, a profit margin that clearly applied to the other type of customer on the Korean market.

In order to make a provisional determination of the normal value, the Commission accordingly held that this had to be calculated by adjusting the profit margin on sales to independent customers other than distributors so as to enable a comparison to be made at the same marketing level as that for the export prices.

(b) **Export prices**

(23) In the case of all sales to independent importers in the Community, export prices were provisionally determined on the basis of the prices actually paid for car radios sold for export to the Community.

(24) Three Korean producers/exporters effected a proportion of their sales and marketing operations in the Community through subsidiaries. In these cases export prices were constructed on the basis of those at which car radios were resold to the first independent buyer, pursuant to Article 2 (8) (b) of Regulation (EEC) No 2423/88. Account was taken both of discounts and rebates granted in connection with the said selling prices and of all costs incurred between importation and resale, including all duties and taxes and a profit margin of 8 % calculated by reference to information gathered in the course of the investigation with regard to the profit margin made by independent importers in the Community.

(c) **Comparison**

(25) In order to make a fair comparison between normal value and export prices, the Commission took account, in the form of allowances, of differences affecting price comparability, such as those relating to conditions of sale, where a direct connection could be satisfactorily demonstrated between the said differences and the sales in question. These comparisons were made on the basis of the ex-works price. There was no case for making the allowances requested in respect of differences relating to physical characteristics since the normal value was constructed in every case on the basis of the production costs of the exported models. It was similarly unnecessary to make allowances for differences relating to import duties and other indirect taxes since the production costs taken into account in constructing the normal value did not include such duties.

(26) Allowances were made in respect of differences relating to transport, insurance, handling and loading costs and to ancillary costs, conditions of payment, warranties, wages and commission paid to sales personnel.

(27) All the producers/exporters requested allowances in respect of conditions of payment. The costs in question were assessed on the basis of the periods for payments prescribed in the conditions of sale. Since, in all cases, normal value was based on production costs, allowances in respect of the cost of credit related to sales were assessed on the basis of the accounting data of the Korean producers that had sold the like product in Korea, by reference to the amount of the actual credit costs incurred by the producers. In the case of the other producers, an allowance in respect of selling expenses was determined on the basis of the average credit costs incurred by those that had sold the like product on the domestic market.

(28) With regard to requests for allowances in respected of warranties provided on the domestic market, it was found that normal practice in Korea was not to provide a warranty but to indicate on the invoice a percentage of the amount of the invoice corresponding to the supply of spare parts free of charge. The Commission provisionally granted an allowance to all the exporters in respect of the said expenses treated as equivalent to warranties, on the basis of a percentage which, following an investigation, was held to be in line with practice within the trade.

(29) As regards wages paid to sales personnel, a number of exporters included costs in respect of personnel not directly employed in selling, such as secretaries or managers. In those cases the allowance was accordingly assessed on the basis of such available facts as enabled the existence of direct links between the work of the personnel in question and sales of the like product to be established.

(30) A number of producers/exporters requested that the Commission disregard claims for allowances having an *ad valorem* effect of less than 0,5 %, pursuant to Article 2 (10) (e). The Commission found, however, that in this particular case the allowances in question, taken altogether, had an appreciable effect on the prices or the value of the transactions to which they related. It was therefore provisionally decided to take acount of all the allowances requested and to dismiss the claim based on Article 2 (10) (e), the terms of which entail consideration, which the Commission undertook, of the effect of the allowances on the prices or value of the transactions affected thereby.

(d) Dumping margins

(31) Normal values, determined as described above, were compared with the export prices on a transaction-by-transaction basis. The preliminary examination of the results of the said comparison shows the existence of dumping in respect of car radios originating in the Republic of Korea sold by all the Korean producers/exporters involved in the investigation, the margin of dumping being equal in each case to the amount by which the normal value exceeded the price for export to the Community.

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

— Goldstar Co., Ltd	6,30 %,
— Tong Kook General Electronics Co., Ltd	20,10 %,
— Inkel Corporation Ltd	18,16 %,
— Hyundai Electronics Industries Co., Ltd	14,70 %,
— Woojin Electric Co., Ltd	19,21 %,
— Woojin Industrial Co., Ltd	19,21 %,
— Samsung Electronic Co., Ltd	0,25 %,
— Daesung Precision Co., Ltd	17,30 %,
— Hyorim Co.,	18,30 %,
— Haitai Electronics Co., Ltd	1,06 %,
— Carmen Electronic Co., Ltd	7,80 %,
— Sung-Moon, Trading Co., Ltd	23,90 %,
— Tong-Hae Sil Up Co., Ltd	10,80 %,
— Se Kyung Co.,	7,26 %,
— Daewoo Electronics Co., Ltd	7,44 %,
— Yung Tai Electronics Ind., Co., Ltd	33,95 %,
— Woo Kwang Co., Ltd	21,03 %,
— Osio Electronics Co., Ltd	24,62 %,
— Kolon International Co.,	6,30 %.

Subject to any changes which may result from further investigation prior to a final decision, the dumping margins provisionally determined in regard to Samsung Electronic Co., Ltd and Haitai Electronics Co., Ltd must be regarded as minimal and, at this stage, there is no justification for taking account of them for the purpose of adopting any protective measure required.

(32) In the case of the exporters who failed to reply to the Commission's questionnaire or who did not make representations to the Commission, dumping was determined on the basis of the facts available. At the beginning of the investigation, EIAK informed the Commission that the number of such exporters was very high, in excess of 50, and it was claimed that a good number of the said Korean companies were not in a position to reply on account of their size and inadequate financial and human resources. The Commission stated that it was prepared to consider the detailed arrangements for taking a sample, on the basis of a list of all the Korean producers/exporters, that contained sufficient information, firstly, to enable the actual need for such an approach to be verified and, if appropriate, to make a representative selection from among all the Korean producers/exporters concerned. A list of the Korean producers that had exported products to the Community, indicating the volume and value of the said exports was provided out of time, after the period for replying to the Commission's questionnaire had expired. A number of exporters who had failed to reply to the questionnaire provided, during the investigation and with the support of the EIAK, certain details regarding the models which they exported and the relevant volume and value of their exports.

The Commission was, however, unable to secure any confirmation of the explanation given to it that the companies which had failed to cooperate in the investigation were not of a size sufficient to be able to reply to the questionnaire. Firstly, it was hardly possible to judge the size and precise resources of the said companies on the basis of the quantities of the like product exported alone. Secondly, it was clear that, in the case of many of the companies which had apparently exported relatively low quantities, the quantities were, in fact, comparable to those exported by some of the companies which had cooperated in the investigation. Lastly, some of the Korean exporters who had failed to cooperate had exported very large quantities to the Community without, however, making representations to the Commission. For all these reasons the Commission has very serious doubts regarding the question whether the results of the investigation into the producers that did cooperate are genuinely representative of the other Korean producers/exporters that failed to make any representations or in respect of whom only very limited unverified information is available, which does not enable any finding to be made.

As a result, in the case of all the Korean exporters of car radios who failed to make representations to the Commission or failed to reply to its questionnaire, the dumping margin was determined on the basis of the facts available, in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88. The Commission took the view that, given the scale of non-cooperation, neither the dumping margins determined in respect of the Korean exporters who cooperated in the investigation nor the information contained in the complaint, the details of which regarding dumping appeared to be relatively incompatible with the results of the investigation and insufficiently indicative of the Korean pricing practices, constituted the most appropriate basis for determining the dumping margin for the other exporters.

In their case the Commission accordingly decided, provisionally, to use the average dumping margin determined in respect of the three models most sold for export and which accounted for some 50 % of all the quantities exported by one of the three exporters who had exported the largest quantities of car radios during the investigation period and which was also, of the said three exporters, the company which had sold the most substantial quantities of the like product on the Korean market during the same period.

On that basis, the dumping margin is 38,3 %. The Commission considers that assigning a lower dumping margin to the abovementioned group of exporters would provide an incentive to avoid the payment of duties and would constitute a bonus for non-cooperation.

D. COMMUNITY INDUSTRY

(33) According to the Commission's information, in addition to the three producers represented by Alarm, there are at least six car radio manufacturers producing or assembling car radios in the Community. From the information gathered during the investigation it has been possible to establish that the Community producers who are members of Alarm accounted, during the investigation period, for at least 75 % of car radio production in the Community taken as a whole, in other words a major proportion of the total Community production of the like product within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

(34) One of the members of Alarm imported car radios originating in Korea during the investigation period and is related to a Korean producer under an agreement for the manufacture of cassette deck mechanisms.

It was established that the manufacturing agreement with one Korean producer covered car radio components intended for sale on the Korean market and had no effect on the business practices of the Community producer in question on the Community market.

As regards the limited imports of car radios from Korea by the Community producer in question, the Commission considered, in accordance with its discretionary powers under Article 4 (5) of Regulation (EEC) No 2423/88, whether the said imports of the product under investigation required it to take the view that the Community producer in question was not part of the 'Community industry'. In this regard it should be borne in mind that it is natural for companies engaged in international trade to have recourse to other manufacturers in order to complete their model range. In the case in point, the products imported fell within that part of the range in regard to which unfair competition from imports originating in Korea was particularly serious. It is clear that the purpose of the said imports was to remain on the market with a complete range of models or even to secure market segments which would have been lost without sales of the models in question. In other words, the producer in question in fact took a legitimate measure of self-protection.

In these circumstances, the Commission concluded that the three Community manufacturers who are members of Alarm formed the 'Community industry' within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

E. INJURY

I. Factors relating to dumped imports

(a) *Volume and market shares*

(35) According to the Commission's information, Community market consumption of car radios has increased steadily. It increased from 12 million units in 1985 to 19,26 million units during the investigation period, that is to say by roughly 60 %.

(36) Over the same period, dumped imports from Korea into the Community increased from 1 796 000 units in 1985 to roughly 5 093 000 units, that is to say by roughly 184 %. This trend was reflected in an increase in their market share from 15 % in 1985 to 26,5 % during the investigation period. During that time, sales by the Community industry fell by 3 % and its corresponding market share declined from 36,7 % in 1985 to 22,2 %.

It is true that the volume of Korean imports fluctuated somewhat during the period in question but that does not affect the fact that their rapid penetration of the Community market is amply demonstrated, with a 77 % increase in market share, while the Community industry's market share fell by 40 %, despite an appreciable increase in total Community consumption. In addition, as a number of Korean exporters acknowledged during the on-the-spot investigation, imports were curbed through short-term economic problems affecting production and export conditions, as a result of economic and social disturbances in Korea in 1988 and 1989.

(b) *Prices*

(37) As regards price erosion, it was found that from 1985 to 1989 the prices of a number of car radio models sold by the Community industry which were comparable to imported Korean models and whose physical and technical features remained unchanged during the period in question, so that an examination could be made of the trend of prices, fell by 20 % or more. It was clear that, in the case of the said products, whose technological development curve is close to its maximum possible level, the price reductions found could not be explained only by factors deriving from a normal competitive context, such as increased production volumes and improved manufacturing techniques.

(38) The Commission also compared the prices of Korean models comparable to models produced in the Community and sold by the Community industry. For the purposes of this comparison, representative car radio models marketed by the Community industry during the investigation period were selected. A selection was then made of representative Korean models exported during the same period which were the most directly comparable to the Community producers' models, taking as a basis the list of features referred to in recital 15. Care was taken to select only Korean models having at least the same or even more features than the Community models with which they were compared. The comparison was made on the basis of sales to the first independent customers at distributor level, making adjustments, where appropriate, based on the export prices of the different models exported, so as to take account of differing features. Substantial price undercutting was found on this basis, varying according to the exporter concerned, the most extreme example amounting to 41 %.

II. Factors relating to the state of the Community industry

(39) Production by the Community industry decreased from 5 472 000 units in 1985 to 5 137 000 units during the investigation period, that is by roughly 6 %. The decrease was particularly marked in 1988, in the order of 13 % by comparison with 1985, while Community consumption increased during those three years by 54 %.

Even if, in assessing injury, the production factor must be evaluated on the basis of the Community industry's production within the Community, it would nevertheless appear advisable, in order to make a more accurate assessment, to take into account the fact that the Community industry also established production facilities outside the Community.

This measure was initially dictated by the need to improve competitiveness be reducing the costs of components and labour. It is, however, clear from the information gathered during the investigation that imports into the Community of car radios manufactured by the Community industry in third countries began to increase considerably from 1987, at a time when the volume of imports from Korea had recently increased by 200 % over two years, during which time the Community industry's market share had declined sharply from 36,7 % to 25,7 %.

It follows from this concurrent timing that the Community industry was obliged to increase its production outside the Community in order to cope with the flood of new imports, combined with sharp decreases in market share, prices and return on sales (see recitals 37 and 42). This approach clearly enabled the Community industry to better defend its position on the Community market. There would, in fact, have been a much more adverse situation than the abovementioned 6 % decrease over five years if measures to diversify production had not been taken by the Community industry from 1987 onwards. This trend also affected the level of employment which, while stable up to 1987, fell by 9 % in 1988 and subsequently returned to its 1986 level, whereas the number of jobs could have increased, had it been possible for production in the Community to have been utilized and even expanded in order to meet the increase in demand, which existing production capacity would have made possible.

(40) The Community industry's rate of production caacity utilization was 87 % in 1986 and 1987, declined to 80 % in 1988 and stood at 81 to 82 % in 1989 and during the investigation period.

(41) Stocks held by the Community industry fluctuated, with an appreciable increase in 1987, an even more significant decline in 1988 and a return in 1989 and at the beginning of 1990 to a level comparable to that of 1986. this parameter for assessing injury is, however, of little significance as regards injury determination when account is taken of the fact that over the same time production capacity utilization fell and producers were obliged to resort to price reductions in order to cope with the low prices charged by competitors on the market.

(42) From 1987 up to the investigation period, the Community industry's average return on sales steadily declined with the occurrence, in one case, in 1988, of losses, which steadily worsened subsequently. Average profit, largely positive in 1986 was close to being negative at the beginning of 1990. The reason for this was the pressure on prices resulting from massive low-priced imports.

III. Conclusions

(43) In determining whether the Community industry suffered material injury, the Commission took into account the following factors :

— imports of car radios originating in Korea increased extremely rapidly from 1985 to April 1990, their market share rising from 15 % to 25 % during that period, while the Community industry's market share, as regards its sales of car radios produced in the Community, fell from 36,7 % to 22,2 % ;

— the selling prices of the complainant producers in the Community were substantially eroded and, in addition, the level of price undercutting in the investigation period was found to be very high ;

— the Community industry's production capacity utilization, its production and sales showed a downward trend despite an increase in total consumption of 60 % from 1985 up to the investigation period ;

— the return on sales and on capital of the complainant producers steadily fell from 1987 until the beginning of 1990.

(44) On the basis of all the abovementioned factors, in particular the losses of market share, comined with significant erosion of profits, the Commission concluded, for the purpose of its preliminary findings, that the Community car radio industry experienced material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

F. CAUSATION OF INJURY BY DUMPING

(a) Effect of dumped imports

(45) The Commission found that the very rapid penetration of Korean imports coincided with an equally rapid loss by the Community industry of market share, which stabilized more or less when the pressure from Korean exports weakened somewhat from 1989 onwards because of the short-term economic situation obtaining in Korea, referred to in recital 36. The same concurrent timing is discernible in regard to the erosion and reduction of prices of the Community car radio models, the marked decrease in average profits of the Community industry and its unavoidable recourse to imports of car radios produced outside the Community. In so far as the market in question is very price sensitive, it is clear that, having regard to the substantial price undercutting found, the dumped imports significantly affected the injury suffered by the Community industry. The very low prices of the very large quantities of dumped imports from Korea necessarily had an adverse effect on the volumes sold by the Community industry on a market that was, nevertheless, experiencing growth ; they likewise had an adverse effect on the general level of selling prices and, as a result, on that of the Community industry's profits ; the trend of these different parameters coincides precisely with the trend of imports originating in Korea.

(46) According to the Korean exporters, the fact that the market share of imports from Korea declined significantly from 1987 to 1989 made it impossible to conclude that the Korean imports caused injury to the Community industry ; the injury stemmed from other factors. However, it has already been shown that the relative decline in imports from Korea is attributable to circumstances with which the exporters were necessarily faced and that this, moreover, curbed, to some extent, the decline in the Community industry's market share. This factor highlights

rather than weakens the direct link between the volume of dumped imports from Korea and the injury caused to the Community industry. It is also certain that the steps taken by the Community industry from 1987 onwards helped to slow down the flood of dumped imports from Korea which, however, remained substantial and clearly continued to have a major impact on the Community market.

(b) The effect of other factors

(47) All the Korean exporters claimed that the injury was caused by factors other than the imports from Korea. Since their exports declined from 1988, while total consumption increased during the same period, it was claimed that any injury was attributable to other imports, essentially those originating in third countries where the Community industry established car radio production facilities. They maintained that the Eurostat statistics showed that in 1989 the prices of the said imports were even lower than Korean prices, which had shown a significant increase, and certain exporters also claimed that these factors were evidence of dumping.

(48) In the case of imports originating in third countries other than Korea, only those originating in countries where the Community industry established car radio production facilities, namely China, Malaysia and Singapore, showed a volume increase, like the imports from Korea, greater than that of total consumption from 1985 up to the reference period. However, while the total of such imports in 1985 exceeded, in volume terms, the imports from Korea, it accounted for no more than 47,7 % in 1987 and roughly 90 % during the investigation period. The corresponding market shares increased from 15,8 % in 1985 to 24,9 % at the beginning of 1990.

Of the said imports, those effected by the Community industry accounted for less than 50 % during the investigation period. They showed an increase of the same order as that of the imports from Korea for the reasons given in recital 39, namely the need to take a necessary and legitimate measure of trade protection.

(49) As regards the level of prices of the products imported by the Community industry, it is virtually inconceivable that the industry could have contributed to its own injury, unless it were shown that not only the Community producers who imported radios but also the other producers making up the Community industry had thus been victims of a practice inconsistent with normal business operations. No evidence of this was furnished. Furthermore, the information gathered during the investigation showed that the pricing policy of the Community producers depended on the specific characteristics of the models sold and did not vary appreciably according to the place where car radios sold by them in the Community were produced. This is all the more to be expected in that it is difficult to imagine that a Community producer would jeopardize his sales of products manufacutred in the Community by selling competing products imported by him at low prices. There is, moreover, no evidence that the products imported by the Community industry were sold at price levels that caused injury to other Community producers.

It cannot, of course, be ruled out that the proportion of imports originating in the three third countries in question brought in by importers other than the Community industry could have had some effect on the volume and prices of sales in the Community. In this regard there is nothing that would allow the conclusion to be drawn that the said imports were being dumped. The statistics in respect of the said imports provided no reliable information as to their actual price level, on account of the inclusion, when calculating the average import prices, of a wide variety of car radio models. The Korean exporters failed to produce the slightest evidence to support their allegations of dumping as regards imports originating in the other third countries to which they referred. In any event, even if the imports other than those of the Community industry originating in the said third countries, whose market share is much lower than that of the imports from Korea and which increased more slowly than the imports from Korea, could have had some impact on the level of prices on the Community market, the injury caused by the imports originating in Korea, considered separately, must still be regarded as material.

(50) It should be noted that imports into the Community originating in third countries other than Korea and the three third countries referred to in recital 48 remained relatively stable, increasing, in volume terms, only by 26 % from 1985 up to the reference period, while during that time imports from Korea increased by 190 %, while total consumption increased by 60 %. The market share of the said imports declined from 26,5 % in 1985 to 20,7 % at the beginning of 1990. It is, accordingly, not apparent that the said imports could have had an impact on the Community industry comparable to that of the imports from Korea.

(51) The above conclusions imply that the Korean exporters' argument that this investigation constitutes discrimination in regard to exports from Korea in breach of Article 13 (5) of Regulation (EEC) No 2423/88 must be regarded as unfounded. In the absence of any evidence of dumping as regards the imports from other third countries, there can be no breach of Article 13 (5), which lays down a requirement of non-discrimination in respect of all imports of a like product found to be dumped and causing injury.

(52) It was also claimed that, faced with very keen competition from other imports originating *inter alia* in Brazil and Japan, the Community industry had lost shares of its traditional market in 'high end' car radios, on which the Korean exporters were not present, and that it had accordingly sought belatedly to penetrate the 'low end' car radio market developed by the Korean exporters. According to them, the injury was therefore caused by those other factors.

It must be pointed out that the Community industry offers for sale the whole range of the like product on the Community market. By reason of the interchangeability of models of the like product, sales in one market segment clearly have an impact on those in other segments, although the dividing lines between the said segments are, in any event, not clearly definable. Moreover, it was indicated in recital 11 that the models imported from Korea are very broadly in line with the range of the models produced and sold by the Community industry. Lastly, even if the Korean exporters had helped to develop one or more segments of the car radio market, this did not entitle them to claim that they could completely take over such segments by selling dumped products on them, thus preventing the Community industry from seeking, through increased sales, to offset any losses of market share resulting from the operation of normal competition in other market segments in which it had originally been more active.

(53) Two Korean exporters also claimed that the products exported by them were of higher quality and more highly priced than those exported by the other Korean exporters. Two exporters also claimed that they had exported small quantities. The said exporters accordingly contended that they could not have caused any injury. Injury must, however, be assessed on an overall basis. It is, accordingly, neither necessary nor possible to identify the proportion of injury attributable to each exporter involved.

(54) The Commission accordingly concluded that the dumped imports from Korea, taken in isolation, caused serious injury to the Community car radio industry.

G. COMMUNITY INTEREST

(55) On account of the significant injury suffered by the Community industry, and having regard, in particular, to its very worrying financial situation, the Commission takes the view that, unless measures are taken against the imports from Korea which are being dumped and have, accordingly, caused injury, a significant short-term reduction in the production of car radios in the Community by the complainant producers is inevitable and that it would appear probable that in the medium-term the said production would cease to exist. All the investment and rationalization operations undertaken in recent years by the Community industry would have been in vain and thousands of jobs would be lost.

In addition, the industry in question is part of an industrial sector in which the relevant technologies are used and developed to cover an entire range of electronic products. Any weakening in one part of the sector in terms of know-how, research and development has repercussions on the overall competitiveness of the industry concerned.

(56) The Korean exporters claimed that the only effect of the measures taken solely against the imports from Korea would be to increase imports originating in third countries other than Korea without, however, eliminating the injury caused by the Korean imports and without any resulting investment or job creation in the Community by the Community industry. It was claimed that the said industry had recently indicated its preference for establishing its own production facilities outside the Community.

It was also argued that consumers' costs would increase without their deriving any compensatory benefit as a result of an improvement in the health of the Community industry.

(57) As regards the first argument, it should be borne in mind that the purpose of anti-dumping measures is to restore fair competition on the Community market. Any increased market share secured by imports other than those originating in Korea, resulting from anti-dumping measures imposed on the latter, should be regarded as resulting simply from the operation of normal competition since no evidence has been adduced that other imports are being dumped. Furthermore, imports from Korea can continue to compete under fair-pricing conditions, which the measures seek to restore. As regards the effects of the measures on the development within the Community of the Community industry, the latter has recently made major invest-

ments and taken rationalization measures in regard to its production within the Community. This is a clear indication of its intention to maintain and improve the said production. It is therefore not possible to accept the arguments put forward by the Korean exporters who, by engaging in massive dumping of exports, have caused material injury, one consequence of which has been unavoidable recourse to increased production of car radios at locations where the costs of manufacture are lower, so that an attempt can be made to compete with low-priced imports. The fact that production within the Community increased somewhat on account of the fact that, for unavoidable reasons, the Korean exporters were unable to keep up the level of their exports, also makes it clear that the Community industry had no intention of decreasing its production in the Community.

(58) The Commission also considered whether the foreseeable effects of imposing anti-dumping duties as far as consumers are concerned could be contrary to the Community interest.

Imposition of duty will result in an increase of costs at the import stage and these will have to be passed on at subsequent stages of consumption. This increase in costs should, however, be fairly limited, in view of the large number of other suppliers on the Community market. The view has been taken that the duties, which are limited to the amount of the dumping margins, will result only in a partial reduction of the appreciable undercutting of the prices of models sold by the Community industry.

The effect of the measures on consumers will, accordingly, be limited to a degree that enables the removal of an advantage in terms of prices resulting from a practice which is unfair and detrimental to the Community industry, whose situation, unless protective measures are taken, appears destined to deteriorate unavoidably.

(59) It is, moreover, in the interests both of the Community industry and consumers that fair competition be restored on the Community market. As things stand, imposition of anti-dumping duties should make it possible to avoid the probable disappearance of the Community industry in the medium-term, which would be liable to seriously diminish competition on the Community market in car radios.

(60) The Commission accordingly considers that it is in the Community interest to remove the effects of the injury caused to the Community industry by the dumping that has been found. The overriding need to protect the viability and maintain the competitiveness of this industry is, to a large extent, consonant with the interests of consumers and offsets the disadvantages, which are limited both in scale and over time, capable of impinging on consumers in the short term.

H. DUTY

(61) Since the differences between the Korean prices and those of the Community producers are, in all cases, greater than the dumping margins found, the duty must be aligned on those dumping margins, as indicated in recital 33, in accordance with Article 13 (3) of Regulation (EEC) No 2423/88.

(62) In the case of the companies which failed to reply to the Commission's questionnaire, did not make themselves otherwise known or failed to provide the information which the Commission considered necessary, it would appear, for the reasons already set out in recital 32, that the duty to be imposed should be based on the facts available and held to be most appropriate, i.e. 38,3 %.

(63) One importer claimed that when imposing anti-dumping duties, the Commission should take account of the specific nature of sales made by correspondence on the basis of catalogues, in so far as the setting of prices is less flexible in such cases, and that it should, accordingly, adjust the detailed arrangements governing the application of any duties imposed. Since, however, anti-dumping measures are applied when the products in question are released for free circulation, there is no statutory basis for distinguishing between particular marketing channels following definitive importation, whereby anti-dumping duties may be imposed that vary over time.

(64) A period should be fixed within which the parties known to be 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 be reconsidered for the purpose of imposing any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping of 38,3 % 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 :

— Goldstar Co., Ltd, Seoul (additional code : 8605),	6,3 %
— Tong Kook General Electronics Co., Ltd, Seoul (additional code : 8606),	20,1 %
— Inkel Corporation Ltd, Seoul (additional code : 8607),	18,1 %
— Hyundai Electronics Industries Co., Ltd, Kyongju (additional code : 8608),	14,7 %
— Woojin Electric Co., Ltd, Seoul (additional code : 8609),	19,2 %
— Woojin Industrial Co., Ltd, Seoul (additional code : 8609),	19,2 %
— Daesung Precision Co., Ltd, Seoul (additional code : 8610),	17,3 %
— Hyorim Co., Seoul (additional code : 8611),	18,3 %
— Carmen Electronic Co., Ltd, Seoul (additional code : 8612),	7,8 %
— Sung Moon Trading Co., Ltd, Seoul (additional code : 8613),	23,9 %
— Tong Hae Sil Up Co., Ltd, Seoul (additional code : 8614),	10,8 %
— Se Kyung Co., Bucheon Citry, Kyongju (additional code : 8615),	7,2 %
— Daewoo Electronics Co., Ltd, Seoul (additional code : 8616),	7,4 %
— Yung Tai Electronics Ind. Co., Ltd, Seoul (additional code : 8617),	33,9 %
— Woo Kwang Co., Ltd, Kyungsangbuch-Dou (additional code : 8618),	21,0 %
— Osio Electronics Co., Ltd, Kyongju (additional code : 8619),	24,6 %
— Kolon International Co., Seoul (additional code : 8620).	6,3 %

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 and sold for export by Samsung Electronic Co., Ltd, Seoul and Haitai Electronics Co., Ltd, Inchon, (additional code : 8621).

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

5. The release for free circulation in the Community of the products referred to in paragraphs 1 and 2 shall be subject to the provisions 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 known to be concerned may make their views known and apply to be heard by the Commission within one month of the date of entry into force of this Regulation.

Article 3

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

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

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

Done at Brussels, 4 February 1992.

For the Commission

Frans ANDRIESSEN

Vice-President