COMMISSION REGULATION (EC) No 2376/94

of 27 September 1994

imposing a provisional anti-dumping duty on imports of colour television receivers originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore and Thailand

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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], as last amended by Regulation (EC) No 522/94 [2], and in particular Article 11 thereof,

After consultation within the Advisory Committee,

Whereas :

A. PROCEDURE

(1) In November 1992, the Commission announced by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding concerning imports into the Community of colour television receivers (hereinafter referred to as CTVs) exported from or originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore, Thailand and Turkey, and commenced an investigation.

The proceeding was initiated as a result of a complaint lodged by the Society for Coherent Anti-dumping Norms (SCAN), on behalf of producers whose collective output of colour television receivers was alleged to represent a major proportion of the Community production of these television receivers.

The complaint contained evidence of dumping of this product originating in or exported from the countries indicated above, and of material injury resulting therefrom, which was considered sufficient to justify opening a proceeding as regards Malaysia, the People's Republic of China, Korea, Singapore, Thailand and Turkey.

(2) The complaint was also directed against Japan and Hong Kong. However, in view of the apparently declining or low level of imports concerned, the evidence of material injury in respect of these two countries was considered, at that time, insufficient to initiate a proceeding.

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

(4) The Hong Kong, Thai and Turkish authorities, most exporters, certain importers, all complainant producers and some non-complainant producers made their views known in writing. All parties who so requested were granted a hearing.

(5) The Commission sent questionnaires to parties known to be concerned and received detailed information from the complainant Community producers, certain producers in the exporting countries and some importers in the Community. The Commission also received a limited amount of information from five Community producers who, though not members of SCAN, supported the complaint.

(6) The Commission sought and verified all information it deemed necessary for the purposes of the preliminary determination of dumping and injury, and carried out investigations at the premises of the following firms :

(a) *Complainant Community producers :*

— Bang & Olufsen AS, Struer, Denmark,

— Grundig AG, Fürth, Germany, and its subsidiaries in France, Italy and the United Kingdom,

— Nokia GmbH, Pforzheim, Germany and its subsidiaries in France, Italy and the United Kingdom,

— Philips Consumer Electronics BV, Eindhoven, Netherlands, and its factories and/or subsidiaries in Belgium, France, Germany, Italy, Spain and the United Kingdom,

— Séleco SpA, Pordenone, Italy,

— Thomson CE, SA, Courbevoie, France, and its factories and/or subsidiaries in France, Germany, Italy and the United Kingdom.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 66, 10. 3. 1994, p. 10.
[3] OJ No C 307, 25. 11. 1992, p. 4.

(b) *Producers in the five market economy countries concerned:*

Malaysia:

— Makonka Electronics SDN.BHD, Ehsan,

— Orion Electric SDN.BHD, Melaka,

— Technol Silver (M) SDN.BHD, Ehsan.

Republic of Korea:

— Daewoo Electronics Co. Ltd, Seoul and Kumi,

— GoldStar Co. Ltd, Seoul,

— Samsung Electronics Co. Ltd, Seoul and Suwon City.

Singapore:

— Funai Electric (Singapore) Pte. Ltd,

— Hitachi Consumer Products (S.) Pte. Ltd,

— Philips Singapore Pte. Ltd,

— Sanyo Electronics (Singapore) Pte. Ltd,

— Thomson Television Singapore Pte. Ltd.

Thailand:

— European-Thai Electronics Co. Ltd, Pathumthani,

— GoldStar Mitr Co. Ltd, Samutsakorn,

— Tatung (Thailand) Co. Ltd, Bangkok,

— Teletech (Thailand) Ltd, Chonburi,

— Thai Samsung Electronics Co. Ltd, Chonburi,

— Thomson Television (Thailand) Co. Ltd, Pathumthani,

— World Electric (Thailand) Ltd, Chonburi.

Turkey:

— Bekoteknik Sanayi AS, Istanbul,

— Cihan Elektronik Sanayi AS, Istanbul,

— Izmir Elektronik Sanayi ve Ticaret AS, Izmir,

— Profilo Telra Elektronik Sanayi ve Ticaret AS, Istanbul,

— Vestel Elektronik Sanayi ve Ticaret AS, Istanbul and Izmir.

(c) *Exporters in Hong Kong of Chinese CTVs:*

— Cony Electronic Products Ltd,

— Great Wall Electronic International Ltd,

— Hanwah Electronics Ltd,

— Kong Wah Electronics Enterprise Ltd and Kong Wah Video Co. Ltd,

— Luks (HK) Industrial Company Ltd,

— Sanyo Electric (HK) Ltd.

(d) *Related importers in the Community:*

— Daewoo Electronics SA, Roissy, France,

— GoldStar Deutschland GmbH, Willich, Germany,

— GoldStar UK, Slough, United Kingdom,

— Hitachi Sales (Hellas) SA, Athens, Greece,

— Nordmende GmbH, Bremen, Germany,

— Philips Consumer Electronics GmbH, Hamburg, Germany,

— Philips Consumer Electronics SpA, Milan, Italy,

— Philips Consumer Electronics Ltd, Croydon, United Kingdom,

— Philips Electronique Grand Public SA, Paris, France,

— Samsung Electronics UK, Ltd, London, United Kingdom,

— Samsung Electronics France SA, Roissy, France,

— Samsung Electronics SpA, Italia, Milan, Italy,

— Samsung Electronics GmbH, Frankfurt-am-Main, Germany,

— Samsung Electrónica Comercial Ibérica SA, Barcelona, Spain,

— Sanyo Fischer Vertriebs GmbH, Munich, Germany,

— Sanyo UK Sales Ltd, Watford, United Kingdom,

— Sanyo España SA, Barcelona, Spain,

— Sanyo Italiana SpA, Italy,

— Tatung (UK) Ltd, Telford, United Kingdom,

— Telefunken Fernsehen und Rundfunk GmbH, Hanover, Germany,

— Thomson Consumer Electronics Marketing France SA, Courbevoie, France,

— Thomson Consumer Electronics Marketing Italia SpA, Trezzano sul Naviglio, Italy,

— Thomson Video Europe GmbH, Hanover Germany.

(e) *Unrelated importer in the Community:*

— ITS Electronics Handels GmbH, Siek, Germany.

(f) *Liaison office of an exporter:*

— Daewoo UK, Ltd, London, United Kingdom.

(7) The investigation of dumping covered the period from 1 July 1991 to 30 June 1992 (hereinafter referred to as 'the investigation period').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(i) Description of the product concerned

(8) The products covered by the complaint, and for which the proceeding was opened, are colour television receivers, with integral tube, with a diagonal measurement of the screen exceeding 15,5 cm. As anti-dumping measures were already in force in respect of colour television receivers with a diagonal screen size of more than 15,5 cm but no greater than 42 cm ('small-screen' CTVs, hereinafter referred to as SCTVs) originating in Korea and the People's Republic of China (by virtue of Council Regulation (EEC) No 1048/90 [1], as amended by Regulation (EEC) No 2900/91 [2], and Council Regulation (EEC) No 2093/91 [3] respectively), the scope of the investigation for these two countries has been limited to CTVs with a diagonal screen measurement exceeding 42 cm. During the investigation period, the products concerned fell within CN codes ex 8528 10 71 ('ex' meaning that the diagonal of the screen exceeds 15,5 cm), 8528 10 73, 8528 10 75 and 8528 10 78.

(9) The combined nomenclature in respect of CTVs was modified with effect from 1 January 1993. This modification introduced distinctions, either concerning the screen width/height ratio (which can be conventional — that is not exceeding 1,5 — or exceeding this ratio and commercially known as 16 : 9 CTVs) or relating to the picture performance (conventional on the one hand or improved as in the case of D2MAC apparatus and high definition television (HDTV) on the other). Accordingly, since 1 January 1993, the CTVs covered by the proceeding have fallen within CN codes ex 8528 10 52 ('ex' meaning that the diagonal of the screen exceeds 15,5 cm), 8528 10 54, 8528 10 56, 8528 10 58, ex 8528 10 62 ('ex' meaning that the diagonal of the screen exceeds 15,5 cm), 8528 10 66, 8528 10 72 and 8528 10 76.

(10) Although the proceeding was indeed initiated in respect of all CTVs with integral tubes, the investigation could not cover D2MAC apparatus and HDTV, which now fall within new distinct CN codes (respectively 8528 10 72 and 8528 10 76), since these products, which introduced qualitative technical changes in CTVs, were still at a development stage and were not available to the public except in very limited circumstances during the investigation period.

The Commission considers that, should measures be imposed on the basis of the findings made during the current investigation, such measures should not apply to D2MAC apparatus and HDTV. However, should a review of measures be carried out in the future, the situation of these products would have to be re-examined on the basis of information relating to dumping and injury, with a view to determining whether such non-application of measures would be justified.

(11) As far as 169 CTVs with a conventional picture performance are concerned, which now also fall within new distinct CN codes (ex 8528 10 62 and 8528 10 66), those products were investigated as they were available to the public, albeit in limited quantities, during the investigation period and therefore fell within the scope of the investigation.

(12) On the above basis, the products subject to the investigation have fallen, since 1 January 1993, within the following CN codes: ex 8528 10 52, 8528 10 54, 8528 10 56, 8528 10 58, ex 8528 10 62 and 8528 10 66.

(ii) Like product

(13) The investigation has shown that the various CTVs sold on the Korean, Malaysian, Singapore, Thai and Turkish markets are, despite differences in broadcasting and reception systems, voltage or design, identical or very similar to the CTVs exported to the Community from these countries.

(14) Likewise, apart from minor technical differences, the range of Community-produced CTVs are alike in all respects to the CTVs exported from Korea, Malaysia, the People's Republic of China, Singapore, Thailand and Turkey to the Community.

(15) In respect of the product definition, a number of exporters argued that a distinction had to be drawn between 'SCTVs' and 'family sets' which allegedly belonged to two different markets and be two different products. In support of this allegation, the exporters referred to the previous proceeding concerning SCTVs, in which such a distinction had been drawn.

On considering these arguments, the Commission concluded that, since the previous investigation into SCTVs, market conditions as well as consumer perceptions have changed significantly:

— demographic development in the Community shows substantial changes. There is an increasing number of small households and starting households, for which a small screen colour television set is their 'household set' or 'first set',

[1] OJ No L 107, 27. 4. 1990, p. 56.
[2] OJ No L 275, 2. 10. 1991, p. 24.
[3] OJ No L 195, 18. 7. 1991, p. 1.

— as a result of the rapid and ongoing development in satellite television broadcasting and the resultant increase in the number of channel and programmes available, SCTVs no longer fulfil the function of a 'second set'. After the number of programmes increased in recent times, many households installed a number of sets which allow individualized and selective viewing,

— experience shows that in periods of an economic downturn, overall sales of CTVs show no change apart from a trend towards an increase in demand for less expensive and/or smaller models, with the result that smaller screen television sets in the perception of certain socio-economic groups are becoming the 'family television',

— finally, SCTVs have become more sophisticated with regard to their featuring. The number of pre-selections has increased due to the increase in programmes offered. SCTVs have more connection possibilities and more often than not they now offer as many features as larger sets.

(16) In addition, this approach is also justified by the fact that different screen sizes belong to adjoining and overlapping segments with a high degree of substitutability, since :

— most suppliers do not confine themselves to the production and export of one screen size but supply complementary sizes,

— consumers' perception is not clearly defined ; sometimes low priced, larger screen sizes appear to be preferred to relatively higher priced, small screen sets.

(17) These considerations show that, apart from the same basic physical and technical characteristics of all television sets, both the use and the 'consumer perception' no longer allow a distinction to be drawn between 'small' and 'larger' screen television sets with exception of CTVs with a diagonal screen size of 15,5 cm or less.

The measurement of the screen of a CTV is only one aspect of a number of other features, which cannot by itself permit a distinction to be made between different market segments. Indeed, there is intense cross segment competition between CTVs on the market, with the exception referred to above, and all CTVs with different screen sizes today are overlapping to an extent which leads to the conclusion that all CTVs with a diagonal screen size greater than 15,5 cm constitute like products and belong to the same market.

(18) The Commission therefore considered that, taken as a whole, all CTVs with a diagonal screen size greater than 15,5 cm sold on the Korean, Malaysian, Singapore, Thai and Turkish markets, as well as those exported from these countries and the People's Republic of China to the Community, are like products comparable to those produced and sold by the Community industry, within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the basic Regulation').

C. COMMUNITY INDUSTRY

(19) In addition to the six Community producers represented by SCAN there are at least 15 other colour television producers in the Community. In the course of the investigation, the examination of the facts has shown that a number of CTV producers in the Community (including some SCAN members) are either related to the exporters concerned by this proceeding and/or are themselves importing the allegedly dumped product from the countries subject to the proceeding. That being so, the Commission considered whether some of these producers should be excluded from the Community industry in the light of the provisions of Article 4 (5) of the basic Regulation.

(20) In this respect, it should be recalled that Article 4 (5) does not provide for an automatic exclusion of the producers related to the exporters or who are themselves importing the allegedly dumped product, but rather imposes on the Community institutions the obligation to consider on a case-by-case basis whether the exclusion of any producer in this situation is warranted.

(21) Accordingly, the Commission considered whether those producers were merely supplementing their Community production with an additional activity based on imports or whether they were importers with relatively limited additional production in the Community. This approach is consistent with the recent case-law of the Court of Justice regarding the definition of the 'Community industry'.

(22) This analysis showed very disparate results for, respectively, those Community producers which are members of SCAN, and virtually all other producers in the Community. Members of SCAN were found to import relatively low quantities (in each case their imports represented less than 25 % of their Community production sold in the

Community). With the exception of two companies, all other producers in the Community, whose related exporters cooperated with the investigation, were found to import quantities exceeding their Community production. This shows a marked difference as concerns the core of business activities for colour television producers in the Community.

(23) On this basis, the Commission has determined that the producers whose main core of business lies outside the Community should be excluded. Despite that exclusion, the producers who lodged the complaint and who fully cooperated with the investigation account for a major proportion of the Community industry within the meaning of Article 4 (5) of the basic Regulation. For purposes of assessing injury and in the absence of cooperation from other Community producers, SCAN members have therefore been considered as the Community industry.

D. ORIGIN

(i) General

(24) At the outset of the investigation it was known that CTVs frequently incorporate components and parts originating in countries other than the country of manufacture or assembly of the finished product, with the result that CTVs may be considered as originating in a country other than the country of manufacture or assembly.

(25) Accordingly, the proceeding was initiated in respect of products exported from or originating in the countries concerned and the notice of initiation of the proceeding stated that the question of the origin of CTVs was to be addressed in the course of the investigation. In particular, import figures concerning Japan and Hong Kong (that is quantities reported as statistics), adjusted to reflect the origin established during the investigation were considered a determining factor to decide the definitive status of those two countries within the framework of the proceeding.

(26) The question of origin was addressed in the light of the provisions of Commission Regulation (EEC) No 2632/70 of 23 December 1970 on determining the origin of radio and television receivers [1], replaced on 1 January 1994 by Article 39 of and Annex 11 to Regulation (EEC) No 2454/93 [2], as last amended by Regulation (EC) No 2193/94 [3], laying down provisions for the implementation of the Community Customs Code and the detailed information regarding the origin and cost of CTV components, as well as processing costs, supplied by the exporters. These data were subsequently verified by random checks in the course of the on-the-spot verifications.

(27) It should be stressed that these findings were established only for the purposes of the present anti-dumping investigation and more particularly for the purposes of determining the appropriate normal values and establishing the sources of injury. The findings are restricted to the investigation period and may well be different from the origin of the CTVs concerned before or after the investigation period. On this basis, the following determinations regarding the origin of the CTVs concerned were made.

(ii) Findings as to origin

(a) *Market economy countries*

(28) All CTVs exported from Korea were of Korean origin.

(29) The vast majority of CTVs exported from Malaysia and Singapore originated in those countries. A small number of the CTVs exported from Malaysia originated in Japan, or in a country included neither in the complaint nor in the proceeding. A small number of the CTVs exported from Singapore actually originated in Korea and Taiwan.

(30) A majority of CTVs exported from Thailand originated in the country of export, while some originated either in Malaysia, Korea and Japan or in a country included neither in the complaint nor in the proceeding. Due to the limited information provided by one of the Thai producers, the origin of this company's exports to the Community was based on that declared to the Community customs authorities.

(31) In Turkey, of five cooperating companies, only one was found to be exporting CTVs of Turkish origin. Virtually the total output of three companies was found to originate in Korea, while the fifth company's output did not originate in any of the countries included in the complaint or in the proceeding.

(1) OJ No L 279, 24. 12. 1970, p. 35.
(2) OJ No L 253, 11. 10. 1993, p. 1.
(3) OJ No L 235, 9. 9. 1994, p. 6.

(32) As a result of the findings of the investigation into origin, a redistribution of quantities exported to the Community was made among exporting countries. Exports of non-cooperating exporters were assumed to have the origin of the country from which they had been exported (country of manufacture, declared to the Community customs authorities as country of origin).

In these circumstances, it was considered that the most appropriate approach was to establish duties for these countries according to the origin of the products determined in accordance with Article 39 of and Annex 11 to Regulation (EEC) No 2454/93.

(b) *People's Republic of China*

(33) Due to the People's Republic of China's non-market economy status (with its implications for the establishment of normal value and thus on the nature and extent of the information supplied in the questionnaires, in particular with regard to costs), the investigation regarding the origin of CTVs manufactured in the People's Republic of China was less detailed than those conducted in respect of other countries involved in the proceeding.

As far as origin is concerned, the cooperating exporters provided information which in general terms could be described as deficient. Out of the 10 companies having cooperated with the investigation, seven either acknowledged that their CTVs were of Chinese origin, did not make any comment, or admitted that they were unable to make a proper determination as to origin. One company claimed that its exports were likely to be of Korean origin, but failed to substantiate such a claim. The remaining two companies alleged that their exports were of Japanese or Taiwanese origin and submitted a study in support of their allegations.

(34) The Commission has noted that exports from the last three companies as well as exports made during the investigation period by all the other cooperating exporters were always declared to be of Chinese origin. The practical consequence of accepting the Korean, Japanese or Taiwanese origin of the CTVs exported by the three companies concerned, as was now claimed, would be that their export transactions would not be computed for purposes of calculating the Chinese dumping margins, that the total exports from China would be reduced by 22,7 % and that export figures for Korea, Japan and Taiwan would have to be increased accordingly.

(35) The risk that State intervention results in exports being channelled through the company with the lowest anti-dumping duty, which *inter alia* justifies the refusal of individual treatment (see recitals 78 to 81), also exists in respect of origin, since any exporter of CTVs alleged to be non-Chinese in origin CTVs would be exempt from the duty, resulting in a considerable potential for circumvention.

A further consideration is the fact that Article 2 (5) of the basic Regulation requires normal value for products imported from non-market economy countries to be established according to the special methods which it contains.

(36) In view of the prevailing circumstances in the People's Republic of China which have restricted the conduct of an origin examination, as explained in recital 33, the Commission will continue to examine this issue and will particularly consider whether a different approach may be appropriate for definitive determinations in respect of the People's Republic of China.

(37) In these conditions, the Commission based its provisional conclusions on the working assumption, already adopted in the previous investigation concerning Chinese SCTVs, that the origin declared to the Community customs authorities was correct. It should be stressed that this assumption is based on the behaviour of the companies concerned, since their customers declared the origin of the CTVs in question according to the supporting documents and advice they had received from their suppliers.

(38) Therefore, for the purposes of the preliminary determination, all CTVs exported from China were considered to originate in China.

(c) *Hong Kong and Japan*

(39) As far as Hong Kong is concerned, no exports from any country involved in the proceeding were found to originate in this territory. There is no reason to believe that any exports made by non-cooperating exporters in any of the six countries investigated might be of Hong Kong origin. Therefore, the Commission considered it reasonable to confirm the non-inclusion of Hong Kong in the proceeding.

(40) As regards Japan, exports from countries involved in the proceeding found to originate in that country amounted to slightly more than 50 000 sets. The Commission found that approximately 400 000 sets declared to be of Malaysian origin and approximately 285 000 sets declared to be of Singaporean origin could not be investigated due to the non-cooperation of the exporters of those sets from those countries.

Information available to the Commission shows that some of these sets are exported by subsidiaries of Japanese producers located in these countries. Accordingly, and in view of the large number of electonic components exported from Japan, the possibility that some of these sets may originate in Japan should not be excluded. However, there was insufficient information to conclude that those sets did originate in Japan.

(41) Therefore, the Commission did not consider it appropriate to depart from the working assumption that sets have the origin declared to the Community customs authorities when imported into the Community. Accordingly, the Commission also considered it reasonable to confirm the non-inclusion of Japan in the proceeding.

E. DUMPING

(42) In view of the very large number of models being sold and of the very limited number of sales of certain models, exporters were given the opportunity to restrict the information provided in their questionnaire responses to those models which accounted for at least 60 % of their sales by volume for each of the CN codes mentioned in recital 8. This criterion was applied to both domestic and export sales. Following previous practice of the institutions in this respect, the Commission has considered these sales to be representative of the total and have therefore based their dumping calculations on these transactions. However, for those exporters who opted to report the totality of their sales, findings concerning dumping were based on all transactions reported.

(i) Normal value

(a) *General*

(43) Because of world-wide differences in broadcasting and reception systems, the models sold on the domestic markets of the exporting countries employed, to a large extent, systems different from those models exported to the Community. Furthermore, the multiplicity of exported and domestic models showed a very wide variety of differences and combinations of features. The establishment of normal values on the basis of prices charged on the domestic markets of the exporting countries would have required numerous and possibly inaccurate adjustments, as most would have to be based on estimates.

(44) Some producers requested the Commission to establish normal values in accordance with Article 2 (3) (b) (i) of the basic Regulation, namely by using the comparable price of the like product when exported to a third country. To this end several producers suggested using the allegedly comparable price of the like product when exported to the United States of America. For the purposes of the preliminary determination, the Commission considers that because of differences in broadcasting and reception systems, as outlined above, this would not be an appropriate method for the establishment of normal value.

(45) To the same end, two exporters, respectively in Malaysia and Thailand, suggested using the allegedly comparable price of the like product when exported to various third countries or territories, including Singapore, the Lebanon and Ceuta. The Commission noted that in the comparison tables they had submitted, they had requested an adjustment for 'cost difference', thus admitting that the products concerned were not fully and directly comparable to those exported to the Community. Given the possible inaccurate adjustments that the establishment of normal values in these conditions would have required and the very limited and non-representative size of the export markets concerned, the Commission considered that, for the purposes of the preliminary determination, their claim could not be accepted.

(46) The Commission thus considered it inappropriate to establish normal values to the basis of export prices to third countries.

(47) Accordingly, given the abovementioned differences in broadcasting and reception systems between the models sold on the domestic markets of the exporting countries and those exported to the Community, and given the absence or inappropriate nature of prices of the like product when exported to a third country, it was considered appropriate to establish normal value, for the purposes of the preliminary determination, on the basis of constructed values as provided for in Article 2 (3) (b) (ii) of the basic Regulation, and Article 2 (5) thereof in the case of the People's Republic of China, for each model of the product concerned exported to the Community.

(48) Constructed values were, with the exceptions indicated below, calculated by adding to the manufacturing costs incurred in the ordinary course of trade of the exported models in the country of origin, the selling, general and administrative ('SGA') expenses and the profit found for each individual producer on its sales of the product concerned in the country of origin. Where cost allocations for SGA expenses were necessary, they were generally made on the basis of turnover, with the exception of those cases where the producers provided sufficient evidence to justify another method of allocation.

(49) In a number of cases the cooperating producers were exporting CTVs with an origin different from the country in which they were assembled. Accordingly, regard being had to the provisions of Article 2 (6), normal values for those models were determined in accordance with the provisions of Article 2 (3) (b) (ii) by taking the average cost of production, the average SGA costs and the average profit of the producers in the country of origin for a comparable model, provided that the CTVs originated in one of the five market economy countries involved in the proceeding.

(50) In those cases in which subsidiaries of the same manufacturer were found both in the country of export and in the country of origin, the cost of production, the SGA costs and the profit of the company located in the country of origin was used for its sister company in the country of export where the country of origin was one of the five market economy countries included in the proceeding. Those CTVs found to originate in countries other than the six involved were excluded.

(51) Certain producers requested an adjustment to normal value in order to take account of the fact that their export sales were original equipment manufacturer ('OEM') transactions — that is to say, sales to customers which sold under their own brand name and therefore incurred costs normally incurred by the manufacturers, such as advertising, warranty, etc. They alleged that these transactions were therefore not comparable to their domestic own-brand sales because OEM sales would be made at lower prices as a result of lower SGA costs.

(52) The Commission and Council have granted this adjustment in previous cases usually through the application of a lower profit level to the constructed values calculated for comparison with export prices to OEMs. Accordingly, and in line with previous practice, the profit used when constructing normal value for OEM transactions was one third of the profit realized on own-brand sales.

(b) *Republic of Korea*

(53) One Korean producer claimed that its normal value should be reduced as a result of an instalment sales incentive rebate scheme which it operated on its domestic sales to a certain category of customer. The Commission considered that this rebate could not be taken into consideration as a reduction to normal value since the granting of the rebate was conditional on a sale being made, under certain terms, by the retailer to an end-user, a transaction which is subsequent to, and independent of, the producer's sale to the retailer.

(54) The cost of production submitted by one Korean producer was adjusted by the Commission to reflect the fact that the amount reported for depreciation under manufacturing overheads had been understated and that certain SGA costs had been offset against other income unrelated to the sales under consideration. In addition, this Korean producer's production cost was adjusted as the allocation used for financing costs was not justified.

(55) One Turkish producer found to be related to a Korean producer made all its export sales to the Community to companies related to that same Korean producer. All the sets produced by this Turkish company and exported to the Community were found to be of Korean origin. Furthermore, in addition to supplying components to the Turkish producer, this Korean producer dictated the price of the finished product when they were sold to the Korean producer's related companies in the Community. The models exported were also identical to models produced in Korea and exported to the Community by the Korean parent company. In those circumstances, the CTVs assembled in Turkey by this company were treated for the purpose of establishing the normal value, as if they had been produced in Korea by the Korean producer.

(56) Similar circumstances applied to a Thai producer which assembled and sold part of its production under the same conditions as those set out in recital 55. Accordingly, normal values for that part of the production were constructed in the same manner.

(c) *Turkey*

(57) No special circumstances other than those described in recitals 43 to 52 were found in respect of producers exporting sets of Turkish origin.

(d) *Singapore*

(58) One Singaporean producer did not sell the like product on its domestic market. Normal value for this producer was constructed by adding to its manufacturing costs the average SGA costs and profit of the other producers selling on the Singapore market, in accordance with Article 2 (3) (b) (ii).

(e) *Thailand*

(59) Some Thai producers did not sell the like product on their domestic market during the investigation period. For those who did sell the like product on the domestic market, none of those sales were found to be profitable. In the circumstances the Commission examined whether the selling, general and administrative expenses of these producers selling domestically could be used for constructing normal values and found that in some cases sales were made in sufficient quantities to be considered as representative. However, in the case of all but one producer it was found that for a variety of reasons their reported costs did not fully reflect the totality of their costs incurred during the investigation period. Accordingly, the SGA costs of that one producer were used when constructing the normal value for all the other Thai producers.

(60) This producer argued that its production plant was in a start-up situation during the investigation period and therefore that the cost of production during that period could not be considered to be in the ordinary course of trade. The producer, however, did not provide sufficient evidence that genuine start-up costs had been incurred and the Commission considered that the relatively higher costs during the investigation period as compared to other periods was the result of a lower capacity utilization, not related to a start-up situation.

(61) The same producer also requested that the allocation of SGA expenses to the like product be made partly on the basis of sales quantities and that a distinction be made between SCTVs and other CTVs when allocating SGA expenses. The Commission considered that the claim concerning the departure from the turnover allocation was not justified in view of the fact that CTVs accounted for more than 90 % of the total turnover and that, since all CTVs are considered a like product for the purposes of this investigation, SGA expenses had to be calculated on the basis of total costs incurred for the sales of like product, without any distinction between the various categories of the like product.

(62) Regarding profit and in view of the absence of profitable sales on the Thai domestic market, the Commission examined whether the alternative possibilities provided for under Article 2 (3) (b) (ii) of the basic Regulation could be used. However, as no appropriate information was found, the Commission considered that the profit should be established as indicated in Article 2 (3) (b) (ii) of the basic Regulation *in fine*, on 'any other reasonable basis'. On this basis, and taking into account all the relevant established facts of the investigation, it was considered that 5 % was a reasonable profit to be used for this market.

(63) No dumping calculation was made for two producers assembling CTVs in Thailand as none of their CTVs were found to originate in a country involved in the proceeding.

(64) For one Thai producer who provided very limited information in the course of the investigation, it was found necessary to apply Article 7 (7) (b) of the basic Regulation for the establishment of normal value. In those circumstances the Commission considered that the highest normal value established for a cooperating producer constituted the most reasonable facts available as the Commission considered that it would have provided a bonus for non-cooperation if the normal value for this producer was deemed to be lower than the highest normal value established for a cooperating producer.

(f) *Malaysia*

(65) None of the Malaysian producers sold the like product on their domestic market during the investigation period and therefore no information regarding SGA expenses incurred and profit realized on sales of the like product on the Malaysian market was available. The Commission examined whether the alternative possibilities under Article 2 (3) (b) (ii) of the basic Regulation could be used in the construction of normal value. As no information regarding either sales of the like product made by other producers or sales made in the same business sector was found in Malaysia, the Commission considered that the SGA costs and profit should be established in accordance with Article 2 (3) (b) (ii) of the basic Regulation *in fine,* namely on 'any other reasonable basis'. For that purpose, the Commission considered it appropriate to make reference to the domestic SGA costs and profit established for Thailand, which, of the markets investigated, was considered to be the one most comparable to Malaysia, in particular in terms of size and level of market development in the CTV sector.

(66) The manufacturing overheads reported by one Malaysian producer were adjusted in order to take account of R&D expenses which had been omitted. The latter were established on the basis of the accounts submitted during the on-the-spot investigation carried out at the premises of a related company which incurred all R&D costs for the group. The manufacturing overheads reported by another Malaysian producer were also adjusted in order to take account of R&D expences which had been understated.

(67) One Malaysian producer's financing costs were adjusted because a large interest-free loan from its parent company, which had artificially reduced its real cost of long-term financing, had not been accounted for. In addition, its unit costs of production and certain salary and wage costs which had been understated were the subject of a similar adjustment.

(g) *People's Republic of China*

(68) Since the People's Republic of China is a non-market economy country, the Commission was required to select an analogue country for the establishment of normal values. Exporters were given the opportunity to comment on this issue in general and in particular to react to the complainant's approach (constructed values in Singapore).

Comments and suggestions varied widely and no country had the preference of a majority of exporters. Given the relatively large number of models exported from the People's Republic of China, the suggestion that the country with the lowest normal value be used could not be followed as no country could be found which had lower normal values for the totality or a very large majority of models.

An exporter which had suggested using one of the three following countries not involved in the proceeding, India, Pakistan or Sri Lanka, was given the opportunity to substantiate its suggestion but failed to do so.

Three exporters suggested the use of domestic prices in Singapore as a basis for normal value, while two other exporters suggested the use of domestic prices in Malaysia, whereas two others proposed the use of domestic prices in Korea and Thailand respectively. However, the Commission considered any method based on domestic prices inappropriate for the reason given in recital 43.

(69) In these circumstances, the Commission has studied the possibility of constructing normal value for the People's Republic of China in any country involved in the proceeding. Only two countries, Korea and Singapore, provided appropriate points of reference for all models exported from the People's Republic of China. As far as Korea is concerned, it appeared that owing to the specific cost structures of Korean producers, difficulties would arise if that country was chosen.

(70) Singapore appeared therefore to constitute the most appropriate reference country and for the purposes of the preliminary determination, normal values for each model of CTVs exported from the People's Republic of China were established on the basis of constructed values in Singapore.

(ii) **Export price**

(a) *Market economy countries: general*

(71) A minimum of 60 % of all export transactions made by the exporters concerned during the investigation period were considered. Where export sales were made direct to unrelated importers, export prices were established on the basis of the prices actually paid or payable for the product sold for export to the Community.

(72) Where exports were made to related companies which imported the product concerned into the Community, export prices were constructed in accordance with Article 2 (8) (b) of the basic Regulation on the basis of resale prices to the first independent buyer, adjusted to take account of all costs incurred between importation and resale, including customs duties and a reasonable profit margin. The latter was established on the basis of the profit margins considered reasonable in this business sector.

(73) Where cost allocations for SGA were necessary in the construction of export prices, these were generally made on the basis of turnover with the exception of those cases where the importers provided sufficient evidence to justify some other method of allocation. These allocations included all the general administration and selling costs related to the sales under consideration, whether financed by the exporter or by the related importer. Discounts and rebates given in connection with sales of related importers to independent buyers were taken into account in constructing export prices.

(b) *Market economy countries: related importers*

(74) One Korean producer's related importer claimed that the volume of its imports considered for any dumping calculation should be based upon the number of units exported from Korea during the investigation period and not the volume of sales in the Community during the same period. The investigation established that the majority of exports made from Korea by this producer were only released into free circulation when the goods in question had been the subject of a firm offer from an independent customer in the Community. Therefore the volume of imports considered for the dumping calculation was based on the number of units released into free circulation during the investigation period.

(75) A related importer had not reported in full the amount of sponsorship and advertising costs that had been incurred in the Community during the investigation period. The same importer requested that certain sales transactions should be excluded from the dumping calculation because the models concerned were alleged to be obsolete. This request was refused because no supporting evidence was produced to show that they had not in fact been sold in the ordinary course of trade. Furthermore, the importer had reported negative figures for after-sales service and bad debts due to changes in the way their accounts had been prepared the figures were readjusted to take account of real circumstances.

(76) One related importer in Italy requested that the 'Imposta Erariale di Consumo', a luxuries tax which was levied on imports or production of CTVs in Italy until the end of 1992 should not be deducted from its resale price as it considered that, in this particular case, the difference in taxation did not affect price comparability. The Commission considers that Article 2 (8) (b) (ii) of the basic Regulation clearly provides that taxes payable in the importing country must be deducted from the export price and therefore that the request cannot be accepted.

(c) *People's Republic of China*

(77) As far as Chinese exporters are concerned, sales to the Community were made either direct or, in most cases, through selling organizations generally located in Hong Kong and related to the exporters. In this context, the Commission was generally able to establish the price charged to the customer in the Community.

However, in certain cases the exporters had sold the goods to an independent intermediary and were unable to report the price finally charged to the Community importer. In these circumstances the export price was based on the last transaction for which the exporters were responsible.

(78) Nine out of 10 cooperating exporters requested individual treatment (that is the establishment of separate export prices and thus of individual dumping margins). Although individual treatment may be given to certain exporters in non-market economy countries, in particular where they have demonstrated their independence from the State in the conduct of their export policy and in the fixing of their export prices, the Commission has considered that, pursuant to Council Regulation (EEC) No 2474/93 [1] imposing a definitive anti-dumping duty on imports into the Community of bicycles originating in the People's Republic of China, the utmost prudence was required in this matter.

(79) In the context of the present investigation, the Commission confirms that it is extremely difficult to establish whether a company really enjoys independence from the State, both in law and in fact, independence from the State and in particular whether it has permanent independence where it appears to enjoy independence at a certain point in time. Although the economy of the People's Repu-

[1] OJ No L 228, 9. 9. 1993, p. 1.

blic of China is in transition from a fully State controlled economy to a partially market orientated economy, State control is still a feature of many aspects of economic life and the law and institutions necessary for the functioning of a market economy are not sufficiently developed and familiar to the economic operators and officials.

(80) The case of one company, which had requested individual treatment but was found to be bound by an agreement made with the State authorities under which some of their sales were to be made through a fully State-owned trading company, clearly indicates the fact that the influence of the State on economic activity in China is still dominant.

(81) In addition, since the granting of individual treatment may cause inappropriate levels of duty to be imposed and gives the State the opportunity to circumvent anti-dumping measures by channelling most exports through the exporter with the lowest duty, the Commission considered, for the purposes of the preliminary determination, that no individual treatment should be granted to any Chinese exporter.

(iii) **Comparison**

(82) Normal value by model, as determined above, was compared at an ex-factory level with the export price on a transaction-by-transaction basis, except for those exporters where the use of weighted averages did not materially affect the results of the investigation. In the case of the Chinese exports, the export prices were taken at Chinese frontier level.

(83) As far as differences affecting price comparability were concerned, adjustments claimed and found to be significant were, where justified, granted in accordance with Article 2 (9) and (10) of the basic Regulation. Such adjustments concerned differences in costs for transport, insurance, handling, packing, credit, warranties, commissions and the salaries of sales personnel. However, for the purposes of the preliminary determination, the Commission considered that the allowances granted pursuant to Article 2 (10) (c) in respect of own-brand sales should, in the case of OEM sales, be limited since some of the allowances are intended to reflect costs which OEM sales do not incur.

(84) An allowance for differences in import charges on imports of raw material physically incorporated in the product concerned sold on the domestic market and sold for export was requested by a number of exporters located in Korea, Thailand and Turkey and granted to the extent that satisfactory justification was provided therefor.

(85) Adjustments were requested to take account of sales made in different quantities at different commercial stages. In the absence of duly substantiated and quantified claims, the Commission does not consider that such adjustments should be granted for the purposes of the preliminary determination.

(86) Several producers claimed that commissions paid to companies belonging to the same group should not be treated as an expense pursuant to Article 2 (10) (c) (v) but as a transfer of profit. For the purposes of the preliminary determination, these claims were rejected since these companies failed to provide sufficient evidence that such commissions were not payments for services granted to them by the said groups.

(87) Adjustments claimed by all Korean producers in relation to an allowance against normal value for the cost of credit granted for the sales under consideration were reduced as part of the credit costs related to the financing of value added tax and special excise tax. The Commission considered that these costs were not directly related to the sales under consideration and could not therefore be the object of an adjustment.

(88) One Korean producer claimed allowances pursuant to Article 2 (10) (c) of the basic Regulation. Its claim for an allowance for salesmen's salaries was rejected because the amount concerned was found to be insignificant within the meaning of Article 2 (10) (e) of the basic Regulation. A claim in respect of transport, insurance, handling and ancillary costs was adjusted downwards because it included a large degree of transport costs which did not relate to conveying the product concerned from the premises of the producer to the first independent buyer. The allowance claimed in respect of warranty costs was also reduced because the claim included costs of repairs which were not made under warranty but had been paid for by the customers.

(89) Another Korean producer made a claim for allowances to be applied to normal values pursuant to Article 2 (10) (c) of the basic Regulation. The claims regarding warranties, transport and salesmen's salaries were adjusted by the Commission because the claim for warranties included an element of indirect costs and the claims for transport and salesmen's salaries had been over-estimated.

(90) The claims made by two Korean producers that normal value should be adjusted to take account of various advertising expenses incurred on their domestic market (such as variable selling expenses of regional sales sections and sales promotion expenses) was rejected on the grounds that the costs did not correspond to any of the selling expenses as specified in Article 2 (10) (c) of the basic Regulation.

(iv) **Dumping margins**

(a) *Cooperating exporters*

(91) The preliminary examination of the facts shows the existence of dumping for all the cooperating exporters except for some companies exporting CTVs of Korean and Singaporean origin, the dumping margins being equal to the difference between normal value and export price duly adjusted.

(92) One exporter, whose main manufacturing base was in Korea, was found to have assembled televisions of Korean origin (with a diagonal measurement of the screen exceeding 42 cm) in two other countries mentioned in the complaint. These Korean origin televisions were assembled by related companies with the finished product being sold exclusively to related importers of the Korean parent company in the Community.

The transactions relating to those television sets assembled outside Korea were consolidated in the overall calculation of the Korean parent company, and a single dumping margin has been calculated for all exports originating in Korea of this Korean exporter irrespective of the country in which they have been assembled.

(93) The Commission fully investigated the question of dumping by Turkish producers exporting CTVs of Turkish origin. However, in view of the conclusions drawn in recital 139 it is not considered necessary to include these findings in this Regulation.

(94) The weighted average dumping margins expressed as a percentage of the free-at-Community-frontier price were as follows :

Malaysia :	— Makonka :	12,4 %
	— Orion :	18,2 %
	— Technol Silver :	33,5 %
	— Thai companies assembling CTVs of Malaysian origin :	
	— GoldStar Mitr :	25,0 %
	— World Electric :	17,3 %
Thailand :	— Samsung :	29,7 %
	— Teletech :	33,6 %
	— Thomson :	14,7 %
Singapore :	— Hitachi :	16,3 %
	— Funai :	0 %
	— Philips :	24,6 %
	— Sanyo :	21,2 %
	— Thomson :	12,2 %
Korea :	— Daewoo :	18,8 %
	— GoldStar :	16,8 %
	— Samsung :	18,0 %
	— Turkish companies assembling CTVs of Korean origin :	
	— Profilo :	0 %
	— Bekoteknik :	7,7 %
People's Republic of China		28,8 %

(b) *Non-cooperating exporters*

(95) For those producers in each of the countries concerned that neither replied to the Commission's questionnaire, nor otherwise made themselves known, the dumping margin was determined on the basis of the facts available in accordance with Article 7 (7) (b) of the basic Regulation.

In this respect, it was considered appropriate to use findings of the investigation as the basis for the determination and it was provisionally concluded that those companies were likely to have dumped at least at the highest level found in the respective country for the producers which had cooperated in the investigation and that accordingly, the highest margin found should be applicable to those companies.

(96) As far as the People's Republic of China is concerned, the companies which did not reply to the Commission's questionnaire accounted for 39,7 % of the total exports from that country.

For the reasons described in recitals 78 to 81, a single dumping margin was established for the People's Republic of China. This dumping margin was established by averaging the dumping margin of the cooperating and the non-cooperating exporters, the latter being determined as set out in recital 95. On this basis, the dumping margin for the People's Republic of China expressed as a percentage of cif value amounts to 28,8 %.

F. INJURY

(i) Cumulation of the effects of the dumped imports

(97) It has been the standard practice of the Community institutions to cumulate imports from several countries when the improved products and the like product of the Community industry meet the following criteria : they are interchangeable, they are sold or offered for sale in the same geographical markets, they have common or similar channels of distribution, they are present in the market concurrently, and finally, they are not negligible. With the exception of exports originating in Turkey, those criteria were found to be met in the case of all the other countries concerned. Accordingly, the similar and concurrent effect of the dumped imports from the countries concerned, with the exception of Turkey, must be assessed jointly.

(98) While the market share held by Turkish imports amounted to 1,5 % during the investigation period, approximately 0,7 % of them were accounted for by non-cooperating exporters for which the origin declared to customs was assumed to be the correct one. In addition, as a result of Community and Turkish Government action the circumstances in respect of Turkey have changed radically.

In this regard a number of practices concerning collection of customs duties when third country parts and components were entering Turkey have been reviewed. In addition, a number of export subsidies granted to exports of CTVs were discontinued. As a result of this, the exports of CTVs from Turkey to the Community have, since then, shown a considerable decline.

(99) In view of the above, the Commission considers, for the purposes of the provisional determination and without prejudice to the definitive determination, that imports from Turkey should not be cumulated with those from the remaining five countries.

(ii) Community consumption, volume and market share of the dumped imports

(100) According to the information available to the Commission, consumption of the colour televisions concerned has increased steadily from 20,5 million units in 1989 to 24,5 million units in the investigation period, an increase of 19,5 %.

(101) Between 1989 and the investigation period, imports from the countries concerned increased by almost 135 %, from 2,04 million units in 1989 to approximately 4,8 million units in the investigation period. This trend was reflected in a parallel increase in the market share of the imports from 9,9 % in 1989 to 19,6 % during the investigation period. Over the same period, sales by the Community industry fell by 6 % (in volume) and its corresponding market share declined from 36 to 28 % in the investigation period.

(iii) Prices of the dumped imports

(102) Prices of the imported CTVs from the countries concerned were significantly below the prices charged by the Community producers during the investigation period. For the determination of price undercutting, the Commission compared the prices of the six complainant Community producers with those of the exporters concerned in six Community markets which have been considered as representative of the Community market as a whole (i.e. Germany, France, the United Kingdom, Italy, Spain and Greece).

(103) For the model comparison, the Commission established the principal criteria most likely to influence a consumer's purchasing decision, namely screen size, possibility of teletext, mono/stereo sound. On the basis of those criteria, representative imported models were compared with directly comparable Community models.

(104) The price comparison was made on the basis of the sales to the first independent customer at the same level of trade. The weighted average selling prices of each exporter in each of the six markets concerned were compared with the corresponding prices for comparable Community models. Adjustments were made where appropriate to ensure a fair comparison.

(105) The results of the comparison showed margins of undercutting for practically all the exporters investigated. The weighted average undercutting margins expressed as a percentage of the free-at-Community-frontier price ranged as follows:

— for Malaysia, from 7,50 % to 23,40 %,

— for Thailand, from 3,18 % to 29,89 %,

— for Singapore, from 0 % to 23,68 %,

— for Korea, from 389,61 % to 54,00 %.

As for the People's Republic of China, the weighted average undercutting margin expressed as a percentage of the free-at-Community-frontier price was 62,1 %.

(iv) **Situation of the Community industry**

(a) *Production and capacity utilization*

(106) The production of the Community industry sold in the Community dropped by 10 % from 7,4 million units in 1989 to 6,6 million units in the investigation period. This drop in production is particularly marked when comparing 1990 with the investigation period, during which time production decreased by 19 %.

(107) Between 1989 and 1990, the capacity of the Community industry remained stable. In 1991, capacity increased noticeably by 10 %. On the basis of information available to the Commission, this increase was effected to take advantage of expected sales increases as a result of German unification. However, those expectations proved to be inflated. In addition, the surge of dumped imports into the Community in 1991 (25 % more than in 1990), prevented the Community industry from taking advantage of the actual market growth.

(108) Capacity utilization has shown a marked decline from an average of 67 % between 1989 and 1991 to 60 % on the investigation period.

(b) *Sales and market share*

(109) Despite an overall increase in Community comsumption of approximately 20 % between 1989 and the investigation period, sales turnover of the Community industry decreased by 9 % over the same period. This was due, one the one hand to a decrease in sales volume of 6 % (from 7,3 million to 6,8 million) and on the other to the decrease in the selling prices as outlined below.

(110) The complainants' market share decreased from 36 % in 1989 to 28 % in the investigation period despite the substantial increase in consumption.

(c) *Stocks*

(111) Stocks increased by 31 % between 1989 and the investigation period, despite the decrease in production referred to above.

(112) Expressed as a percentage of the sales quantity, stocks also show an increase between 1989 and the investigation period. As a result, stock clearance by the Community which had taken 49 days in 1989 took 69 days in the investigation period which added substantially to the financial pressures it already faced.

(d) *Price depression*

(113) On average, prices of the complainants have dropped by 3 % between 1989 and the investigation period. The overall price decrease of 3 % deflects attention from the fact that prices should normally have increased as a result of improved quality and performance over that period.

(e) *Profitability*

(114) The financial situation of the Community industry, which was already precarious in 1989, deteriorated up to the investigation period, by which time the complainants were making losses; on a weighted average basis these losses amounted to 5 % on turnover. They were incurred despite substantial reductions in costs achieved through the continued rationalization measures taken by the Community industry since 1989. However, this economic indicator should be viewed in the light of the world-wide situation of this industry, which has achieved very low or limited profits in recent years.

(f) *Employment*

(115) The Community industry was forced to reduce the number of its employees dramatically between 1989 (30 503 people) and the investigation period (22 257 people) in an effort to remain viable in the face of the dumped imports from the countries concerned.

(v) **Conclusion**

(116) Since 1989, Community producers have experienced a decline both in production and in sales, and have lost market share in terms both of volume and of value in a growing market. The Community producers had to face severe undercutting practices. The financial situation of the producers, which was already quite difficult in 1989, rapidly deteriorated in 1991 and 1992 to levels which, if allowed to continue, will not be sustainable.

(117) All injury indicators examined by the Commission show a very precarious financial and market situation, and on this basis it is concluded that the Community industry concerned has been adversely affected and is suffering material injury.

G. CAUSATION

(118) The Commission examined whether there was a casual link between the dumped imports and the injury suffered by the Community industry and whether other factors caused or contributed to that injury.

(i) Effect of the dumped imports

(119) In examining the effects of the dumped imports, it was found that the increasing volume and market share of the dumped imports from the countries concerned coincided with the loss of market share and the deterioration in the financial situation of the Community industry. Owing to dumping, the importers' product was sold at very low prices on the Community market which, because of the nature of the product concerned, is transparent and price sensitive. This negative situation, specifically evidenced by the loss of market share of the Community industry since 1989, coincided with the strong and increasing presence in the Community market of the dumped imports concerned.

(ii) Special consideration of the Republic of Korea and the People's Republic of China

(120) Some exporters from Korea and the People's Republic of China argued that their exports of CTVs having a diagonal screen size of more than 15,5 cm but no more than 42 cm (SCTVs) could not have caused injury to the Community industry since they were already subject to anti-dumping duties, and that their remaining exports of CTVs were insufficient to do so.

(121) Accordingly, the Commission examined whether dumped imports of CTVs with a diagonal screen size of more than 42 cm had caused injury to the Community industry. For that purpose, the Commission analysed both the volume and price of those imports as well as the impact on the Community production of the same products. The Commission found that Korean imports had increased from 442 000 units in 1988 to 701 678 units in the investigation period, whilst Chinese imports had increased from 44 000 units to 513 800 units in the same years.

As has been explained above, their prices significantly undercut the Community producers' prices in the investigation period. The Commission has also considered whether the injury indicators examined showed different results when examined solely in respect of Community production of CTVs larger than 42 cm. This examination has shown that the injury indicators disclose similar patterns if all CTVs are considered or if only CTVs with diagonal screen size of more than 42 cm are considered. In these circumstances, the Commission concludes that dumped imports originating in Korea and in the People's Republic of China of CTVs larger than 42 cm have, through the effects of dumping, contributed to the injury caused to the Community industry.

(iii) Effects of other factors

(122) The Commission considered whether factors other than the dumped imports might have caused or contributed to the injury suffered by the Community industry, such as falling exports to third countries by the Community industry, an increase in imports from countries not covered by the proceeding or imports by the Community industry.

(123) Exports by the complainant Community industry actually increased over the investigation period from approximately 11 % of total sales by volume in 1989 to 14 % in the investigation period. Consequently, the development of these export sales to third countries could not have contributed to the material injury suffered by the Community industry.

(124) Some of the exporters alleged that injury to the Community industry was at least partly attributable to :

— imports from countries other than those concerned by the present proceeding,

— imports of CTVs made by the complainants from some countries involved in the proceeding,

— fierce internal competition among Community-based producers and price pressure from newly established Community producers,

— inflated expectations of increased sales on the part of Community producers following German unification.

(125) Regarding imports into the Community from sources other than the countries concerned, it should be noted that although Community consumption had increased by 20 % between 1989 and the investigation period, imports into the Community from those sources actually declined by 15 % over the same period with a parallel decrease in market share from 17,8 % to 12,6 %, while imports from the countries concerned increased by 135 %.

Accordingly, imports from these other third countries could not, with the possible exception of Taiwan and Austria, have had an impact on the Community industry comparable to that of imports from the countries concerned. It was also claimed that the rate of increase of CTVs imported from Malta had been dramatic. However, it should be pointed out that the starting point was very low and that imports during the investigation period from this source were less than 200 000 units, i.e. less than 0,8 % of total consumption in the Community.

(126) With regard to imports by the Community industry, the Commission found that as a percentage of total imports they remained relatively stable between 1989 and the investigation period and if anything showed a decrease. Over the same period, imports from the countries concerned increased from 2 million units to 4,8 million units, or from 34 % of total imports in 1989 to 54 % of total imports in the investigation period.

In terms of market share, the volumes imported by the Community industry accounted for 4,1 % of the market in 1989 and remained stable thereafter, which is in marked contrast to the evolution of the market share held by imports from the countries concerned, which increased from 9,9 % in 1989 to 19,6 % in the investigation period.

(127) The Commission found that imports were made by the Community industry, in some cases from their own production facilities, located in a number of the exporting countries. However, in the light of the information available, the Commission has concluded that these imports were effected in order to maintain competitiveness in the Community CTV market in the face of dumped imports.

In this respect, the Commission cannot accept the argument made by some exporters that the Community industry deliberately set out to injure its Community production of CTVs by imports from outside the Community. On the contrary, the Commission found that the prices charged by the Community industry for these imports were on a par with their comparable Community-produced CTVs.

These imports by the Community industry were a justified and necessary attempt to protect market share against very substantial increases in dumped imports. The only possibility open to the Community industry in these circumstances was to move some of its production facilities to third countries and import CTVs manufactured at lower costs into the Community market.

(128) As far as the acute internal competition in the Community is concerned, it cannot be ruled out that newly established Community producers may have exerted a certain price pressure in order to enter the market. Similarly, the results of over-optimism on the part of the Community producers following German unification may have had a negative impact.

(iv) **Conclusion**

(129) The Commission considers that, notwithstanding the fact that other elements may have had a negative impact on the Community industry, dumped imports from the countries concerned have, taken in isolation, caused material injury to the Community industry. In this respect, it has to be stressed that both the basic Regulation and the GATT Anti-dumping Code recognize that other factors may also be causing injury at the same time as the dumped imports and require only that the injury caused by the dumping alone shall be 'material'.

H. COMMUNITY INTEREST

(130) In assessing whether it is in the Community's interest to take anti-dumping measures in respect of imports of CTVs from the countries concerned which have been dumped and have caused injury to the Community industry concerned, the Commission has considered the views of all parties involved in the proceeding.

(131) The Commission considers that unless remedial measures are taken, a further fall in production of CTVs in the Community by the complainant producers is inevitable in the short term as they attempt to cope with the heavily dumped imports. As part of their self-protection strategy, two major complainant producers have already moved part of their production outside the Community. Should this trend continue, as is likely if remedial measures are not taken, it is highly probable that all CTV production in the Community by the complainants will disappear with the loss of thousands of jobs in this sector alone. The disappearance of Community production of compact disc players which was similarly beset by injurious dumping, bears ample testimony to this probability.

(132) The negative impact of such a development would not be restricted to the CTV sector. Upstream and downstream sectors, particularly the latter, could be seriously affected. Because of the interdependent nature of the various parts that make up the consumer electronics sector, the disappeareance of such an important anchor part as CTVs, would have disastrous consequences for the future of the whole sector. High volume consumer products such as televisions generate the revenues required for investment in research and development which provides the springboard for new product development, improvement of existing products, production and marketing techniques, which are vital factors in maintaining competitiveness in a highly competitive sector.

(133) Accordingly, the necessity of restoring the health of this strategic part of the Community's industrial base is paramount.

(134) The necessity of imposing remedial measures to counter the effects of the unfairly priced imports has been outlined above. Since the CTVs subject to the proceeding enter the Community fully made up and are not incorporated into any other product, no intermediate Community industry is likely to be affected by the imposition of measures.

(135) In view of the very large number of operators in the market, the imposition of measures at the proposed level will restrict neither the range of imported products available to consumers nor price competition between the different brands. Any overall damage to the interests of importers in respect of profits or employment is considered unlikely or, at worst, very limited. However, some adjustement in the relative market shares of a number of related importers and some OEM importers, which have to a large extent been gained through dumped prices might be expected.

(136) Therefore, the argument of the exporters and importers that the imposition of measures would result directly in higher retail prices and restricted choice for consumers has no foundation.

(137) The Commission considers that the elimination of unfair trade practices, which is fundamentally in general Community interest, will neither prevent producers in third countries from competing in the Community market nor, consequently reduce the quality and diversity of supply. The expected remedial effect of the measures will occur in terms of a change of the relative market shares held. Any increase in prices should be limited given the nature of the measures proposed and the numerous competitors in the Community market.

(138) The Commission considers, therefore, that it is in the Community interest to remove the effects of the injury on the Community industry and to eliminate the existing unfair trade practices by the imposition of provisional anti-dumping measures on imports of the product concerned originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore and Thailand.

I. PROVISIONAL DETERMINATION IN RESPECT OF TURKEY

(139) In view of the particular circumstances regarding CTVs exported from Turkey, as outlined in recitals 98 and 99, the Commission does not consider at this stage that there are sufficient elements to impose provisional measures against Turkey. This determination is without prejudice to the decisions which the Council may adopt for defenitive determinations.

J. DUTY

(140) For the purpose of establishing the level of the provisional duty, the Commission took account of the dumping margins found and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

(141) For the establishment of this amount the Commission's practice is to take account of specific circumstances of individual cases. In this case the Commission has considered it appropriate for the purposes of the preliminary determination to limit such amount to that sufficient to eliminate price undercutting. In this respect the Commission has taken account of two significant aspects of this case :

(i) the fact that factors other than the dumped imports, specific to the Community CTV market, appear to have contributed to the injury to the Community industry ;

(ii) the fact that on a world-wide basis this industry has for a number of years realized no or extremely low profits.

(142) On the basis of the above, the resulting percentage increases would be :

— for Korea,	up to 54,00 %,
— for Malaysia	up to 23,40 %,
— For Thailand,	up to 29,89 %,
— For Singapore,	up to 23,68 %,
— For China,	up to 62,14 %.

(143) In the majority of cases, the increases in export prices necessary to remove the injury caused by dumping, in respect of a particular exporting producer, did not exceed the corresponding

margins of dumping. Consequently, the proposed provisional duties were generally based on the injury margin established, with a few exceptions where the dumping margin was applicable.

(144) For the reasons outlined above, a single duty has been established for all producers in the People's Republic of China.

(145) In establishing the level of provisional duty for producers in each of the countries concerned who neither replied to the Commission questionnaire nor otherwise made themselves known, it is considered appropriate that the rates of duty be based on the highest rates of undercutting found for each of the five countries so that non-cooperation is not rewarded. In these cases, where the highest undercutting margin exceeded the highest dumping margin found, the rate of duty should be limited to that dumping margin.

(146) On the basis of the above, provisional anti-dumping duties, which should take the form of *ad valorem* duties, shall be as follows :

	Rate of duty	
Republic of Korea		
Daewoo	18,8 %	
GoldStat	16,8 %	
Samsung	18,0 %	
Profilo	0	(CTVs assembled in Turkey)
Bekoteknik	7,7 %	(CTVs assembled in Turkey)
Residual duty	18,8 %	
Malaysia		
Makonka	12,4 %	
Orion	12,7 %	
Technol Silver	7,5 %	
GoldStar Mitr	23,4 %	(CTVs assembled in Thailand)
World Electric	13,5 %	(CTVs assembled in Thailand)
Residual duty	23,4 %	
Singapore		
Thomson	3,7 %	
Sanyo	13,1 %	
Philips	4,8 %	
Hitachi	0	
Funai	0	
Residual duty	23,6 %	
Thailand		
Teletech	29,8 %	
Thomson	3,1 %	
Samsung	14,3 %	
Residual duty	29,8 %	
	Rate of duty	
China	28,8 %.	

K. FINAL PROVISIONS

(147) In the interest of a sound administration, a period should be fixed in which the parties concerned may make their views known and request a hearing. Furthernore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty the Commission may propose,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed of colour television receivers :

— with a diagonal screen size of more than 15,5 cm, whether or not combined in the same housing with a radio broadcast receiver and/or a clock, falling within CN codes ex 8528 10 52 (Taric code : ex 8528 10 52*10), 8528 10 54, 8528 10 56, 8528 10 58, ex 8528 10 62 (Taric code : 8528 10 62*10) and 8528 10 66, originating in Malaysia, Singapore and Thailand,

— with a diagonal screen size of more than 42 cm, whether or not combined in the same housing with a radio broadcast receiver and/or a clock, falling within CN codes 8528 10 54, 8528 10 56, 8528 10 58, ex 8528 10 62 (Taric code : 8528 10 62*90) and 8528 10 66, originating in the People's Republic of China and the Republic of Korea.

2. The rate of the duty applicable to the net free-at-Community-frontier price before duty shall be as follows :

	Rate of duty	Taric additional code
Malaysia	23,4 %	8801
People's Republic of China	28,8 %	—
Republic of Korea	18,8 %	8807
Singapore	23,6 %	8812
Thailand	29,8 %	8816

with the exception of imports which are manufactured and sold for export to the Community by the following companies which shall be subject to the rate of duty mentioned hereunder :

	Rate of duty	Taric additional code
(a) *CTVs originating in Malaysia manufactured by:*		
— Makonka Electronics SDN.BHD, Ehsan, Malaysia	12,4 %	8796
— Orion Electric SDN.BHD, Melaka, Malaysia	12,7 %	8797
— Technol Silver (M) SDN.BHD, Ehsan, Malaysia	7,5 %	8798
— GoldStar Mitr Co. Ltd, Samutsakorn, Thailand	23,4 %	8799
— World Electric (Thailand) Ltd, Chonburi, Thailand	13,5 %	8800
(b) *CTVs originating in the Republic of Korea, manufactured by:*		
— Daewoo Electronics Co. Ltd, Seoul, Republic of Korea	18,8 %	8802
— GoldStar Co. Ltd, Seoul, Republic of Korea	16,8 %	8803
— Samsung Electronics Co. Ltd, Seoul, Republic of Korea	18,0 %	8804
— Bekoteknik Sanayi AS, Istanbul, Turkey	7,7 %	8805
— Profilo Telra Elektronik Sanayi Ve Ticaret AS, Istanbul, Turkey	0,0 %	8806
(c) *CTVs originating in Singapore manufactured by:*		
— Funai Electric (Singapore) Pte. Ltd, Singapore	0,0 %	8808
— Hitachi Consumer Products (S.) Pte. Ltd, Singapore	0,0 %	8808
— Philips Singapore Pte. Ltd, Singapore	4,8 %	8809
— Sanyo Electronics (Singapore) Pte. Ltd, Singapore	13,1 %	8810
— Thomson Television Singapore Pte. Ltd, Singapore	3,7 %	8811
(d) *CTVs originating in Thailand manufactured by:*		
— Teletech (Thailand) Ltd, Chonburi, Thailand	29,8 %	8813
— Thai Samsung Electronics Co. Ltd, Chonburi, Thailand	14,3 %	8814
— Thomson Television (Thailand) Co. Ltd, Pathumthani, Thailand	3,1 %	8815

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

Article 2

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

Article 3

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

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

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

Done at Brussels, 27 September 1994.

For the Commission

Leon BRITTAN

Member of the Commission