COMMISSION REGULATION (EC) No 1645/95

of 5 July 1995

imposing a provisional anti-dumping duty on imports of microwave ovens originating in the People's Republic of China, the Republic of Korea, Thailand and Malaysia

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 with the Advisory Committee,

Whereas :

A. PROCEDURE

(1) In December 1993, 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 of microwave ovens originating in the People's Republic of China, the Republic of Korea, Thailand and Malaysia, and commenced an investigation.

The proceeding was initiated as a result of a complaint lodged by the Groupement Interprofessionnel des Fabricants d'Appareils d'Équipement Ménager ('GIFAM'), on behalf of producers allegedly representing a major proportion of the total microwave oven production in the European Community.

The complaint contained evidence of dumping of the product originating in the countries indicated above, and of material injury resulting therefrom; this evidence was considered sufficient to justify opening a proceeding.

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

A number of producers in the countries concerned and an organization (The Foreign Trade Association, 'FTA') representing importers into the Community, made their views known in writing. Several parties requested a hearing.

(3) The Commission sent questionnaires to parties known to be concerned and received detailed information from the complaining Community producers, from three exporters related to Chinese producers, four Korean producers, one Malaysian and one Thai producer. It also received detailed information from one exporter related to a Korean and Thai producer and from 18 importers, most of them being related to Korean and Malaysian producers.

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

(a) *Complaining Community producers*

— AEG Hausgeräte AG ('AEG') — Germany,

— Candy Elettrodomestici Srl and its production company Gasfire, SpA ('Candy') — Italy,

— Groupe Moulinex SA ('Moulinex') — France,

— Thomson Electromenager SNC ('Thomson') — France.

An investigation was also carried out at the premises of Compagnie Européenne pour la Fabrication d'Enceintes à Micro-Ondes (CEFEMO), France, a joint venture which, during the investigation period, included three partners, AEG, Thomson and Toshiba, Japan. The two former companies sold microwave ovens produced under the joint venture. After the initiation of the anti-dumping proceeding, Toshiba decided to discontinue its microwave oven activity as a partner of CEFEMO and not to cooperate in the investigation. Consequently, all information relating to Toshiba (production, sales, market shares, etc.) was disregarded in the assessment of the situation of the complaining Community industry.

(b) *Exporters of Chinese products*

— Vegary Ltd — Hong Kong,

— SMC Microwave Products Co. Ltd — Hong Kong,

— SMC Microwave Products Co. Ltd — British Virgin Islands — Hong Kong.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 66, 10. 3. 1994, p. 10.
[3] OJ No C 341, 18. 12. 1993, p. 12.

(c) *Korean producers*

— Daewoo Electronics Co. Ltd — Korea ('Daewoo'),

— LG Electronics Inc. — Korea ('LG') (1),

— Korea Nisshin Co. Ltd — Korea ('Korea Nisshin'),

— Samsung Electronics Co. Ltd — Korea ('Samsung Korea').

(d) *Malaysian producer*

— Samsung Electronics (M) SDN.BHD. — Malaysia ('Samsung Malaysia').

(e) *Thai producer*

— Acme Industry Co. Ltd — Thailand ('Acme').

(f) *Exporter of products of Korean and Thai origin to the Community*

— Imarflex Mfg. Co. Ltd — Japan.

(g) *Related importers in the Community*

— Daewoo Electronics SA — France,

— LG Goldstar France Sarl — France,

— LG Electronics UK Ltd — United Kingdom,

— LG Electronics Deutschland GmbH — Germany,

— Samsung Electronics France — France,

— Samsung Electronics GmbH — Germany,

— Samsung Electronics Comercial Ibérica SA — Spain,

— Samsung Electronics (UK) Ltd — United Kingdom.

(5) The investigation of dumping covered the period from 1 October 1992 to 30 September 1993 ('the investigation period').

(6) Owing to the volume and the complexity of the data gathered and examined, and in particular in view of the number of interested parties involved, the investigation has exceeded the normal time period of one year.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(7) The product covered by the complaint, and for which the proceeding was opened, is microwave ovens for domestic use ('MWOs'), falling within CN code 8516 50 00.

(8) MWOs are used to heat and/or to cook food by the process of electromagnetic energy. In certain models, the cooking process can be a combination of electromagnetic energy and traditional heating.

(9) It has been established that there are differences between MWO models, in particular with respect to the following main characteristics:

— the capacity,

— the functions of the MWOs:

— electromagnetic (microwave) energy only, i.e. mono-function,

— electromagnetic energy combined with a grill, i.e. bi-function,

— electromagnetic energy combined with a grill and with traditional cooking, i.e. combi or tri-function,

— the operating system which can be mechanical or electronic, and

— additional features such as power control, a different power output, a timer, a memory cook function, etc.

All these MWOs have similar basic physical characteristics and are considered to form one product for the purpose of this proceeding consisting of a range of models with at the one end of the spectrum simple, low-price models and at the other end sophisticated high price models without any clear dividing line between various MWO models or groups of models.

Indeed, despite the differences shown above, all MWOs serve the same function; they are to a considerable extent interchangeable, they are directly competing with each other and they cannot be differentiated on the market as distinct products.

It has been concluded on the basis of the investigation that all MWOs exported from the four exporting countries concerned, fall into the model range of the product described above.

(10) As to the question whether MWOs sold on the domestic markets from one like product with the MWOs sold by the Community industry, the investigation has shown that the various MWOs sold on the domestic Korean market which was also used as an analogue market economy for establishing normal value for China, are in general, despite differences in voltage, design or the availability of specific features such as a weight sensor and a gas sensor, identical or similar in physical characteristics, application and use to the MWOs produced and sold by the Community producers.

The cooperating Malaysian and Thai producers had no sales on their domestic markets and consequently no technical information concerning MWOs sold on these markets was available.

(1) During the verification visit this company's name was Goldstar Co. Ltd.. As part of a general name change within the Lucky Goldstar Group, on 1 March 1995, the company changed its name into LG Electronics Inc. At the same time the company's related importers located in the Community changed their names from Goldstar France Sàrl to LG Goldstar France Sàrl, from Goldstar UK Sales Limited to LG Electronics UK, Ltd and from Goldstar Deutschland GmbH to LG Electronics Deutschland GmbH.

It was also found that the MWOs exported to the Community from the four exporting countries concerned possess identical or similar basic technical characteristics with the MWOs produced and sold in the Community.

Therefore, the Commission considers that MWOs produced and sold in the Community constitute a like product relative to the product sold in Korea and the product imported from China, Korea, Malaysia and Thailand within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the Basic Regulation').

C. DUMPING

(a) China

(1) *General*

(11) The investigation carried out with respect to MWOs exported from China revealed that the export volume reported by the two cooperating producers located in China was considerably higher than the import volume from China reported in the Community import statistics for the investigation period. The Commission was not able to assess the reason for this discrepancy conclusively, but, given the export channels detailed below, there is a strong likelihood that some of the exports reported by the two Chinese producers and sold via their Hong Kong based export companies were actually declared as being of Hong Kong origin on importation into the Community. Indeed, the Community import statistics indicate that the imports declared as of Hong Kong origin are 51 600 units for the investigation period, i. e. somewhat lower than the discrepancy established above.

It follows from the above discrepancy, that in certain circumstances the declarations made by importers located in the Community appear to have been incorrect, and particular attention should be paid to imports declared as being of Hong Kong origin.

(2) *Normal value*

(12) Since China is considered to be a non-market economy country for the purposes of the present anti-dumping proceeding, the Commission determined this country's normal value on the basis of the normal value established in an analogue country in accordance with Article 2 (5) of the Basic Regulation. As stated in the notice of initiation, the Commission investigated whether Korea could be chosen as an analogue country and concluded that this choice was appropriate and not unreasonable given the following characteristics of the market and the producers operating therein :

— the size of the Korean domestic market is considerably greater in volume than exports to the Community from China,

— a number of different suppliers of substantial size operate in this market ensuring a competitive market environment,

— the Korean producers have an easy access to the main components of MWOs, as they are themselves operators of considerable importance in the worldwide components market, and

— these producers manufacture certain basic and main components of MWOs such as the magnetron (in this respect, it has been confirmed in the investigation that the Chinese producers concerned purchase these components on the world market in which Korean suppliers have a considerable presence).

Furthermore, the following elements concerning the Korean market and the Korean producers were considered :

— the investigation revealed that Korea is one of the world's largest producers of MWOs,

— in the light of the size of their overall MWO production, Korean producers can be considered cost efficient,

— some of these producers are fully integrated producers of MWOs.

Finally, no interested party has made a proposal for an analogue country other than Korea.

(13) One of the Chinese companies argued that Korea might be inappropriate given the distribution system for electric appliances on the domestic market as described in the complaint.

The complaint stated that, given the structure of the market for electric appliances in general, the size of the margins for distribution specifically could be considered surprisingly high. The complaint, however, did not elaborate on the situation of Korean producers of electronic appliances and their sales into the distribution network. Considering the activity of these producers, the Commission, after detailed verification of all data submitted concerning their domestic sales activity, is satisfied that the Korean domestic market is governed by market economy principles and is of considerable size. In any event, as can be seen below, the Commission has granted Korean producers certain allowances for differences in the normal value and the export price affecting their comparability, i. e. physical differences, differences relating to import charges and indirect taxes and to selling expenses. These allowances were also taken into account when establishing the normal value for an analogue country.

It is therefore concluded that Korea is considered to be the most appropriate and not unreasonable analogue country for establishing normal values for the MWOs exported from China.

(14) The normal value for each of the models exported from China was established, as appropriate in light of the approach taken for the determination of the normal value of Korean producers concerned (see recitals 18 to 25), as a constructed normal value or on the basis of prices actually paid or payable on the domestic market in Korea for directly comparable models using the main characteristics of MWOs as described in recital 9. Where normal value was constructed, this was done on the basis of the total cost of production incurred in Korea including a reasonable amount for selling, general and administrative ('SG & A') expenses, to which a reasonable margin for profit was added. For each of the models exported by the Chinese producers, at least two or three producers in Korea were found to have directly comparable models. The normal value of each model was thus calculated for the Chinese companies as the average of the normal values of the respective directly comparable models of the Korean producers.

(3) *Export price*

(15) In establishing the export price the Commission based its determination on all export transactions during the investigation period reported by Chinese producers. In establishing this price the Commission had to take into account the fact that no price for the Chinese product sold for export to the Community from the country of origin was found to exist, as all export sales were made through related selling organizations located in Hong Kong. Therefore the export price had to be constructed on the basis of the price at which the product concerned was resold by the Hong Kong-based selling companies to independent customers located in the Community, in accordance with consistent practice of the Community Institutions. In establishing the export price, due allowance was made for a margin of 5 %. According to the information submitted by the selling companies this margin reflects the costs incurred for the export operation carried out in Hong Kong.

(4) *Comparison*

(16) As far as differences affecting price comparability were concerned, those adjustments which were claimed by the Korean producers concerned and which proved to be justified and significant in accordance with Article 2 (10) (c) of the Basic Regulation on the Korean market were also applied in comparing normal value and export price for Chinese exports. Such adjustments were made in respect of physical differences, differences relating to import charges and indirect taxes and to selling expenses as discussed in recital 31 below. Normal value by model on a Korean frontier level was compared with the export price at the Chinese frontier level on a transaction-by-transaction basis.

(5) *Dumping margin*

(17) This comparison revealed the existence of dumping in respect of imports of MWOs originating in China taken as a whole. The weighted average dumping margin found for imports of MWOs originating in China, expressed as a percentage of the free-at-Community-frontier price is 20,8 %.

One company claimed individual treatment. However, the investigation revealed that the company concerned was a joint venture between the Hong Kong-based company and two Chinese companies. A detailed analysis of the joint venture's Articles of Association undertaken by the Commission underlined the substantial direct and indirect, contractual or factual involvement of Chinese public authorities in the production and sales of MWOs. Following the consistent practice of the Community Institutions, it was therefore deemed appropriate to reject the request of the Hong Kong-based exporter to receive individual treatment in the present anti-dumping proceeding for exports of its MWOs originating in China to the Community.

Furthermore, based on the assessment of the import quantities made in recital 11, the Commission is satisfied that all Chinese MWO-producers which have exported to the Community during the investigation period have cooperated during the investigation, and that therefore the information received from these producers can be taken as the basis for the conclusions as far as dumping is concerned.

(b) **Korea**

(1) *Normal value*

(18) As a general remark, it should be mentioned that, for those Korean producers which reported the cost of components used in the exported models without including the import charges and indirect taxes which should normally be borne by these components when incorporated into MWOs destined for consumption in Korea, an appropriate amount was added to the cost of materials in order to calculate the cost of production incurred for MWOs sold domestically.

(19) As far as the determination of normal value for the Korean producers is concerned, the Commission first established whether these producers' total domestic MWO sales were representative in comparison with the producers' total MWO export sales to the Community.

This assessment revealed that three companies had domestic sales volumes substantially in excess of 5 % of their export sales and that a fourth company had no domestic MWO sales at all.

Consequently, for this fourth company normal value was constructed in accordance with Article 2 (3) (b) (ii) of the Basic Regulation based on this producer's cost of manufacturing of the MWO models exported to the Community. In constructing the normal value, all costs of production incurred in Korea, fixed and variable, for materials and manufacturing plus a reasonable amount for SG&A expenses and a reasonable margin for profit were taken into account. It was established in this respect that the company concerned had a related company outside Korea involved in research and development of the MWOs produced in Korea. These costs were also taken into account when constructing normal value.

As this company had no sales on the domestic market, SG&A costs and profit were established as the average of other Korean companies which had profitable MWO sales on the domestic market as determined below.

(20) For the three companies which had domestic sales of MWOs, the Commission assessed further whether these producers' domestic sales overall were made in the ordinary course of trade, i.e. if they were made at a profitable level overall and if they were made at arm's length conditions. The assessment of the profitability of the MWO sales was based on the most frequently sold MWO models for each of the three producers accounting for more than 85 % of the respective producer's total domestic sales. In view of the multitude of models sold on the domestic market by each of the producers concerned, at times at very low quantities for individual models, this approach was considered the most reasonable and representative.

Furthermore, this assessment was made using the companies' information on total cost of production as incurred for sales on the domestic market. Where, based on the verification conducted, the companeis concerned had reported incomplete information in this respect, the costs of production were adjusted accordingly.

The assessment of whether domestic sales were made in the ordinary course of trade described above showed that one producer had no profitable domestic sales. Consequently, it was concluded that this producer had not made any sales in the ordinary course of trade on the domestic market and that, accordingly, its normal value had to be constructed in accordance with Article 2 (3) (b) (ii) of the Basic Regulation. To that end, this producer's cost of manufacturing was used as well as his SG&A costs incurred for sales on the domestic market. As far as the appropriate profit margin for the determination of the normal value is concerned, the Commission used the average profit rate of the two other companies which had made sales of the like product in the ordinary course of trade on the Korean market as established below.

(21) For the said two companies, the Commission further established whether individual MWO models were sold in the ordinary course of trade on the domestic market. In that respect the Commission established what share of total sales for each model was made at a profitable level.

If all or more than 80 % of total sales by model was made at a profitable level, average domestic sales prices were used to determine normal value for these models on condition that, at the same time, the model concerned was comparable to an exported model. If between 20 and 80 % of total sales were made at a profitable level, the Commission established normal value as the average of the profitable sales only.

If less than 20 % of total sales of a model were made at a profitable level domestic prices were not used in order to determine normal value.

(22) Finally, using the above assessment of the profitable domestic sales by model, the Commission established for each of the two companies concerned the profit margin obtained on their sales in the ordinary course of trade on the domestic market. Where necessary, the company specific profit margins were used in the determination of the constructed normal value for each of the two companies individually as described below and the weighted average profit margin of both of these companies was used in order to construct the normal values for those two companies which had either no domestic sales (see recital 19) or no profitable sales (see recital 20).

(23) In establishing normal value for the two companies which had profitable domestic sales, the Commission assessed their submissions in respect of domestically sold models allegedly identical or directly comparable to models sold for export to the Community, as far as physical characteristics are concerned. In the light of these submissions, the producers in question had concluded that the normal value concerned should be based exclusively on the domestically paid or payable prices in the ordinary course of trade. The Commission

examined the model comparability on the basis of four criteria, i.e. the capacity, the functions (mono-, bi- or tri-function ; see recital 9), the operating system (mechanical or electronic) and other features of the domestically sold and exported models. Where the Commission established on the basis of this examination that this claim could be accepted and that sales were made in the ordinary course of trade, normal value was established based on the average domestic sales price.

(24) However, for a number of allegedly comparable models the Commission established the following :

— in certain cases the models differed in at least one of the main characteristics of MWOs — among others capacity, functions, operating system (see recital 9).

— in other cases the producers in question claimed that models were identical or closely comparable while at the same time requesting substantial adjustments when actually comparing the normal value and the export price for the models concerned. The adjustments claimed in such cases were all based on differences in cost of production of the models concerned and were of such a size in relation to the total cost of production that the Commission considered that this alone was a sufficient indication that the models concerned could not be considered identical or closely comparable.

(25) In view of the above circumstances the Commission considered that the following approach was warranted :

— in the cases in which the producers had failed to submit conclusive supporting documentation on the comparability of models, the Commission used the information submitted on other models in order to determine whether comparable models were sold domestically. If such other models existed, normal value was established on the domestic sales prices of these models,

— if no such comparable domestically sold models existed, normal value was constructed in accordance with Article 2 (3) (b) (ii) of the Basic Regulation. Normal values were constructed on the basis of all costs, fixed and variable, incurred in Korea for materials and manufacture to which an amount for SG&A expenses as incurred was added. In respect of the profit rate to be used, the Commission used the specific profit rate of the company concerned as obtained for its domestic sales in the ordinary course of trade.

(2) *Export price*

(26) For each of the exporting producers, the export prices were determined based on more than 85 % of the total export volume taking into account the most frequently sold models. As in the case of the determination of normal value, it was considered necessary to follow this approach in view of the numerous models which were sold for export in very small volumes. In the light of the substantial volume of total exports covered by this approach it was considered representative.

(27) For export sales made directly to importers in the Community unrelated to the exporting producer, export prices were determined on the basis of the prices paid or payable by the unrelated importers.

(28) In cases where exports were made to companies related to the exporting producers and located in the Community, which imported the product into the Community, export prices were constructed on the basis of resale prices of these related importers to their first independent customer in the Community in accordance with Article 2 (8) (b) of the Basic Regulation. For this purpose all costs incurred between importation and resale were taken into account, including customs duty, and a margin for profit of 5 % on turnover which was considered reasonable in view of the information available to the Commission in this and previous anti-dumping proceedings concerning the same business sector.

(29) In those cases where the expenses incurred between importation and resale reported by related importers did not reflect the actual costs incurred between importation and resale for these companies' resales of MWOs in the Community, or did not take into account costs related to these sales which were borne or reimbursed by the producer/exporter, the respective costs were included in accordance with Article 2 (8) (b) of the Basic Regulation.

(3) *Comparison*

(30) Normal value by model, as determined above, was compared at an ex-factory level with the ex-factory export price on a transaction-by-transaction basis.

(31) For the purpose of a fair comparison due allowance in the form of adjustments was made for differences affecting price comparability. Those allowances which were claimed and which proved to be significant were granted where justified in accordance with Article 2 (9) and (10) of the Basic Regulation. Adjustments were made in respect of physical differences, differences relating to import charges and indirect taxes and to selling expenses.

(32) For the company having no domestic sales on the Korean market, the average percentage of the adjustments granted to other Korean companies on their profitable sales was also granted to this company.

(4) *Dumping margin*

(33) This comparison revealed the existence of dumping in respect of imports of the product concerned originating in Korea.

(34) The weighted average dumping margins provisionally established for each Korean producer and expressed as a percentage of the free-at-Community-frontier price are as follows:

— Daewoo	24,8 %
— LG	32,8 %
— Korea Nisshin	30,5 %
— Samsung Korea	4,8 %.

(35) For the case of any Korean exporting producer or exporter which failed to reply to the Commission's questionnaire or did not otherwise make itself known, dumping was determined on the basis of the facts available in accordance with the provisions of Article 7 (7) (b) of the Basic Regulation.

Given that a comparison of the data concerning exports to the Community provided by all the cooperating Korean producers and the Community import statistics indicated a high level of cooperation, the Commission considered that the most reasonable facts available were those established in the investigation and that, since there was no reason to believe that any non-cooperating producer would have dumped at a lower level than the highest found, the highest dumping margin, determined with regard to a single producer which had cooperated in the framework of this investigation, was the most appropriate for these purposes.

This approach was also considered necessary in order to avoid creating an opportunity for circumvention.

(c) **Malaysia**

(1) *Normal value*

(36) The Commission's investigation found that the sole co-operating Malaysian producer did not have any sales of MWOs on its domestic market. Consequently, the normal value for this producer was constructed in accordance with Article 2 (3) (b) (ii) of the Basic Regulation. As no information regarding either sales of the like product made by other producers or sales made in the same business sector was available for the Malaysian domestic market, the Commission considered that the SG&A costs and profit to use in order to construct the normal value should be established on 'any reasonable basis'. For that purpose, the Commission considered it appropriate to take the domestic SG&A costs and profit established on profitable sales in Korea. This approach was considered reasonable as the Korean market was the only one covered by the present anti-dumping proceeding in which profitable sales of the like product were made in representative quantities. Furthermore, as outlined under point recitals 12 and 13, the Korean market is large and the economic operators concerned operate in a competitive environment. Finally, the Malaysian producer concerned is wholly owned by one of the main Korean producers, It can thus reasonably be assumed that the Malaysian producer would have a similar cost structure and market behavior were it to sell on the Malaysian market.

Constructed normal values of the exported models were therefore computed by taking all costs of production, fixed and variable, of materials and manufacture incurred by the Malaysian producer plus an amount for SG&A costs and a reasonable margin for profit as determined for the Korean producers that had representative sales in the ordinary course of trade as explained in recitals 19 to 22.

(37) The reported costs of components used by the Malaysian producer for each model produced were adjusted in order to include import charges and indirect taxes which should normally be born by these components when incorporated into MWOs destined for consumption in Malaysia, but which were not collected because the producer was operating in a free trade zone.

(2) *Export price*

(38) In accordance with the methodology used for exports from the other countries concerned more than 85 % of all export transactions made during the investigation period were taken into account in the determination of the export price. For sales directly to unrelated importers, export prices were determined on the basis of the prices paid or payable.

(39) In cases were exports were made to companies related to the exporting producer and located in the Community, which imported the product into the Community, export prices were constructed on the basis of resale prices of these related importers to their first independent customer in accordance with Article 2 (8) (b) of the Basic Regulation taking into account all costs incurred between importation and resale, including customs duty, and a margin for profit of 5 % on turnover which was considered reasonable in view of the information available to the Commission in this and previous proceedings concerning the same business sector.

(40) In those cases where the expenses incurred between importation and resale reported by related importers did not reflect the actual costs incurred between importation and resale for these companies' resales of MWOs in the Community, or did not take into account costs related to these sales which were borne or reimbursed by the producer/exporter, the respective costs were included in accordance with Article 2 (8) (b) of the Basic Regulation.

(3) *Comparison*

(41) Normal value by model, as determined above, was compared at an ex-factory level with the ex-factory export price on a transaction-by-transaction basis.

(42) For the purpose of a fair comparison and given that the normal value was established on the basis of the SG&A expenses incurred for profitable sales on the Korean market and the profit obtained for such sales, the same allowances claimed and proved to be justified and significant on the Korean market were also granted to the Malaysian producer in accordance with Article 2 (9) and (10) of the Basic Regulation. Such adjustments were made in respect of physical differences, differences relating to import charges and indirect taxes reflecting the actual situation in Malaysia and to selling expenses.

(4) *Dumping margin*

(43) This comparison revealed the existence of dumping in respect of imports of the product concerned originating in Malaysia.

(44) The weighted average dumping margin provisionally established for the Malaysian producer and expressed as a percentage of the free-at-Community-frontier price is as follows:

— Samsung Malaysia 31,7 %.

(45) As in the case of Korea described in recital 35, dumping was determined on the basis of the facts available in accordance with the provisions of Article 7 (7) (b) of the Basic Regulation for any other exporting producer or exporter which failed to reply to the Commission's questionnaire or did not otherwise make itself known.

Data concerning exports to the Community provided by the sole cooperating Malaysian producer and Community import statistics indicated a high level of cooperation. Therefore the sole cooperating producer's dumping margin was considered appropriate.

This approach was also considered necessary in order to avoid creating an opportunity for circumvention.

(d) **Thailand**

(1) *Normal value*

(46) As with the case of Malaysia described in recital 36, the Commission determined that the sole cooperating Thai producer did not have any sales of MWOs or in the same business sector on the domestic market. Consequently, the approach taken in order to establish normal value was the same in the case of the Thai producer as for the Malaysian producer.

(47) The reported costs of components used by the Thai producer for each model produced were adjusted in order to include import charges and indirect taxes which should normally be born by these components when incorporated into MWOs destined for consumption in Thailand, but which were not collected because the producer was operating in a free trade zone.

(2) *Export price*

(48) More than 85 % of all export transactions made during the investigation period was taken into account in the determination of the export price. As all export sales by the Thai producer to the Community were made directly to unrelated importers, export prices were determined on the basis of the prices paid or payable.

(3) *Comparison*

(49) Normal value by model, as determined above, was compared at an ex-factory level with the ex-factory export price on a transaction-by-transaction basis.

(50) For the purpose of a fair comparison and given that the normal value was established on the basis of the SG&A expenses incurred for profitable sales on the Korean market and the profit obtained for such sales, the same allowances claimed and proved to be justified and significant on the Korean market were also granted to the Thai producer in accordance with Article 2 (9) and (10) of the Basic Regulation. Such adjustments were made in respect of physical differences, differences relating to import charges and indirect taxes reflecting the actual situation in Thailand and to selling expenses.

(4) *Dumping margin*

(51) This comparison revealed the existence of dumping in respect of imports of the product concerned originating in Thailand.

(52) The weighted average dumping margin provisionally established for the Thai producer and expressed as a percentage of the free-at-Community-frontier price is as follows :

— Acme 20,3 %.

(53) For the case of any other exporting producer or exporter which fialed to reply to the Commission's questionnaires or did not otherwise make itself known, dumping was determined on the basis of the facts available in accordance with the provisions of Article 7 (7) (b) of the basic Regulation.

(54) Given that a comparison of the cooperating Thai producer's data concerning the volume of exports to the Community and the Community import volume statistics showed that, (unlike in the case of Korea and Malaysia), there was a high level of non-cooperation (a conclusion confirmed by other information received in the framework of the investigation), the Commission considered in particular that the opportunity for circumvention should be avoided.

Given that the non-cooperation led to a lack of information on the export activity of the non-cooperating producers and due to the fact that import statistics did not allow any conclusions to be reached on the export prices, the most reasonable facts available were those established in relation to the cooperating producer investigated. Since, in the light of the foregoing, there was no reason to believe that any non-cooperating producer would have dumped at a lower level than the highest found, the highest weighted average dumping margin determined with regard to an individual MWO-segment for which the cooperating Thai producer had made significant exports was considered to be the most appropriate for these purposes.

(55) This approach was also considered necessary in order not to provide an unacceptable bonus for non-cooperation.

(56) The dumping margin provisionally established for all other exports from Thailand expressed as a percentage of the free-at-Community-frontier price is 31,8 %.

D. **COMMUNITY INDUSTRY**

(57) The investigation conducted has revealed that the companies active in the production and/or assembly of MWOs operating in the Community can be divided into four different categories of companies :

— the complaining companies,

— companies in the Community with mainly Community-held capital which did not cooperate in the complaint and some of which have, according to information received during the present anti-dumping proceeding, imported large quantities of MWOs from the countries concerned,

— companies in the Community with mainly non-Community held capital, not related to the producers of the allegedly dumped product located in the exporting countries and which did not cooperate in the investigation,

— companies in the Community related to certain of the producers of the allegedly dumped product located in the exporting countries and which did not cooperate in the investigation.

(58) In defining the Community industry, both data obtained through market research (i.e. output of non cooperating or non-complaining companies), and information received in the responses to the questionnaires, were used since not all the above companies active in the Community MWO market cooperated in the investigation. It should be noted that it was possible to cross-check information received from various sources ensuring the overall reliability of the assessment.

(59) The Commission considered whether some of the companies operating in the Community should be excluded from the definition of the Community industry in order to assess whether the complainant companies constitute a major part of the total Community production in the meaning of Article 4 (5) of the Basic Regulation.

In this respect, it should be recalled that Article 4 (5) does not provide for an automatic exclusion of Community producers related to the exporters or producers located in exporting countries, or producers which 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.

Accordingly, the Commission considered in particular whether the companies operating in the Community supplemented their Community production or assembly activity with an additional activity based on imports or whether the companies were acting as importers with relatively limited additional production activity in the Community.

(60) As far as the complaining companies are concerned, the Commission established that none of them imported any MWOs from the countries concerned during the investigation period.

(61) For companies operating in the Community related to companies located in Korea in particular, the Commission, following previous general practice, considered that these companies, through their relationship with the producers/exporters concerned were shielded from the injurious effects of dumped imports. The Community Institutions have previously concluded in such circumstances that to include such companies in the injury findings would distort aggregate data on the constitution of the Community industry. On these grounds, the Commission considers that the relevant companies should be excluded from the definition of the Community industry.

(62) One company operating in the Community and related to a non-cooperating Thai producer should also be excluded from the definition of the Community industry on this basis alone.

(63) For the non-cooperating companies with mainly Community-held capital it was found, based on market research, that their imports of MWOs from the countries concerned were substantial. However, in the absence of precise information on the extent of their MWO production activity in the Community, and in order to ensure a reliable estimate of total Community production for the purposes of determining whether the complaining companies constitute a major proportion of the Community industry, it was decided, at the present stage, not to exclude these companies from the definition of Community production as this was the most rigorous approach to testing the standing of the complainants.

(64) Finally, for the companies operating in the Community with mainly non-Community held capital, other than those related to the producers/exporters of the allegedly dumped product, it appeared unnecessary to investigate in depth, at this stage, whether these companies form a part of the Community industry for the purpose of the present anti-dumping proceeding. Indeed, even considering these companies as being part of the Community industry, the companies on behalf of which the complaint was lodged and which fully cooperated in the present investigation count for at least 60 % of the total MWO production by the Community industry during the investigation period and therefore constitute a major proportion of the Community industry in the meaning of Article 4 (5) of the Basic Regulation.

For the remainder of this document, the term 'Community industry' therefore refers only to the complaining companies of the Community industry.

E. INJURY

(a) Volume of the Community market

(65) On the basis of the data obtained in the framework of the present anti-dumping proceeding and general market research data, the Commission determined that the total apparent Community consumption of MWOs dropped from 7 130 000 units in 1989 to 4 830 000 units in 1990. This substantial decrease was due to news of a possible health risk from microwave oven cooking in this period. This uncertainty in the market led to high stocks at the distribution level at the end of 1989 and a drop in sales by the producers in 1990. After this substantial drop the market recovered to reach 6 710 000 units in 1992 and 7 260 000 units during the investigation period, representing an increase of 50 % as compared to 1990. It is however noted, that apart from the spectacular decrease in 1990 and a corresponding increase in 1991, the total volume of the market can be considered as relatively stable. The apparent consumption was also verified on the basis of market research information reflecting sales of MWOs to end-customers. Both methods of determining MWO-consumption of the Community market result in a similar size of the market, the difference being explained by stocks held at the level of the producers, importers or intermediaries.

(b) Cumulation of the imports originating in the countries concerned

(66) Following consistent practice of the Community Institutions, the Commission examined whether the effect of the imports of MWOs from the four countries concerned with regard to the Community industry should be analyzed cumulatively on the basis of the following criteria :

— absolute and relative level of imports during the investigation period,

— comparability of the products imported in terms of physical characteristics and interchangeability of end use, and

— similarity of market behavior.

As far as imports from China, Korea, Malaysia and Thailand in the investigation period are concerned, for each country individually these were made in non-negligible quantities compared with the Community production.

Concerning the comparability of all products imported, the investigation carried out confirmed that the MWOs originating in the countries concerned are a like product when compared to MWOs sold by the Community industry, as established in recital 10.

Finally, the investigation revealed that the prices of imports originating in all four countries were at a low level when compared to those of the Community industry.

(67) Two Korean producers argued that imports from Korea should not be cumulated with imports from the other countries, as imports from Korea decreased between 1989 and 1992 and because the average import prices were substantially higher for Korean MWOs than that for those imported from the other countries concerned.

The Commission confirms that there was a significant drop in imports from Korea from a level of 1 830 000 units in 1989 to 1 110 000 units in 1990. This temporary drop in import volumes simply corresponds to the substantial decrease in consumption which occurred on the Community market because of alleged health risks using MWOs mentioned in recital 65. Given however the subsequent trend in the Korean imports, leading to a market share of 24,4 % during the investigation period, cumulation is clearly appropriate.

Furthermore, the Commission has established that the prices of MWOs originating in Korea were in line with the prices of MWOs originating in the other countries covered by the present proceeding, i.e. substantially below the prices of the Community industry.

The Commission therefore considers that the requirements to cumulate imports of MWOs originating in Korea with those of the other countries concerned are fully met in the present investigation.

(68) The Malaysian producer has argued that imports from Malaysia should not be cumulated with those of the other countries concerned, as the annual import volumes from Malaysia and their respective market share are *de minimis*.

The Commission has established in its investigation that imports of MWOs originating in Malaysia increased rapidly from 0 units in 1991 to reach a substantial quantity during the investigation period. The corresponding Community market share for these imports increased from 0 to about 2,7 % over the same time period. On the basis of the above development and taking into account that the Malaysian producer started its production in 1991 after a substantial investment in a high capacity plant had been made, the imports concerned cannot be considered as *de minimis*. The average prices of imports into the Community from Malaysia furthermore substantially undercut those of the Community industry.

(69) In the light of the above, the Commission considers it appropriate to conclude that, based on consistent Community practice, it is justified to cumulate the imports from China, Malaysia, Korea and Thailand.

(c) Volume and Community market shares of the dumped imports

(70) In order to determine the overall volume of MWOs imported from the four countries concerned the Commission used information submitted by the Chinese, Korean and Malaysian producers that cooperated in the proceeding and on Eurostat import statistics with respect to imports originating in Thailand.

On this basis the volume of imports, when taken together, decreased from 2 170 000 units in 1989 to 1 560 000 units in 1990, increasing again to a level of 2 580 000 in 1991, to 2 330 000 in 1992 and ultimately to 3 050 000 units in the investigation period. While this development shows a volatility of imports mainly due to the abovementioned fluctuation in consumption in the Community in 1989 and 1990, it has been established in any event that imports increased by 18 % when comparing the investigation period with 1991.

(71) Based on the determination of the Community market size, the above development in import volumes from the four countries concerned taken together represents a rise in market share in the Community from 30,4 % in 1989, to 32,3 % in 1990, 37,9 % in 1991, 34,7 % in 1992 and ultimately to 42,0 % in the investigation period.

(d) Prices of the dumped imports

(72) The investigation conducted has established that prices of MWOs originating in the countries concerned were significantly below the prices charged by the Community industry during the investigation period.

In order to determine the level by which the prices of the producers/exporters undercut those of the Community industry, the Commission compared the sales prices of the Community industry to independent customers with sales prices of the producers/exporters concerned to independent customers in four Member States (namely Germany, France, the United Kingdom and Spain). Total sales in these Member States markets have been considered as representative for the Community market as a whole, as they represented more than 80 % of the total Community market.

(73) Furthermore, the Commission took account of the main characteristics of MWOs (capacity, functions,

operating system see also recital 9) in establishing the price comparison and compared the weighted average selling price of each of the models of each producer/exporter in each of the four markets with the corresponding weighted average prices for comparable Community producers' models.

As the comparison was made on a Community customer delivered duty paid level, adjustments for duties paid, insurance, freight and inland transport in the Community were made for those transactions which covered sales from the producers/exporters directly to independent customers in the Community and not made at this level. These adjustments were made taking into account information received in the framework of the present anti-dumping proceeding from the other producers/exporters concerned.

(74) The results of the above price comparison showed that, for all producers located in the exporting countries concerned, substantial price undercutting existed. The weighted average undercutting margin by exporting country was 29 % for China, ranged from 21 % to 31 % for Korea and was 33 % for Malaysia and 40 % for Thailand.

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

(1) *General*

(75) In assessing the Community industry's situation it should be borne in mind that the information on production, capacity, sales, market share and profitability concerns the Community industry as it existed in the investigation period. However, there were a number of changes in this industry prior to the investigation period which influenced the development of the economic indicators shown below.

In particular:

— one of the companies forming part of the Community industry, Moulinex, took over another company located in the Community, Krups, in 1990. Krups had previously not produced MWOs. Through this acquisition, Moulinex acquired a well known brand name and an established distribution network complementing that of Moulinex,

— at the end of 1991 another company making up the Community industry, AEG, became a partner of CEFEMO, a production joint venture company (see recital 4, complaining Community producers) and started production and sales in 1992. In this respect a new company that had previously sold but not produced MWOs became a newly established microwave oven producer in the Community.

Consequently, an increase in certain of the economic indicators, e.g. production, sales volume or market share of the Community industry, could be expected in the time period from 1991 to 1992 regardless of any negative influences established in the present investigation.

(2) *Production*

(76) Production increased between 1991 (around 1 500 000 units) and 1992 (around 1 700 000 units), reflecting the start of the operation of a new Community producer and decreased by 3 % when comparing 1992 with the investigation period (around 1 600 000 units).

(3) *Capacity and capacity utilization*

(77) As far as the development of the Community industry's production capacity is concerned, it increased from around 1 500 000 units in 1989 up to and including 1992 to around 2 500 000 units and remained stable up to and including the investigation period. As with the production volume, this development must be seen in conjunction with the entry into the market of a new Community producer.

Over the same time periods, the capacity utilization decreased from 76 % in 1989 to 68 % in 1991 and to 65 % in the investigation period.

(4) *Sales and market share*

(78) The complainants' sales volume in the Community, expressed in units, increased from around 1 100 000 units in 1989 to around 1 500 000 units in 1992 and then remained stable up to the investigation period. However, this overall development is not in line with the increase of the total Community MWO market.

Correspondingly, while the market share held by the Community industry increased from 16 % in 1989 to 24 % in 1990, it decreased in the following years to 23 % in 1992 and 21 % during the investigation period.

This development occurred despite the strategy pursued by the Community industry aiming at a consolidation of its market position and despite its pricing policy as described below.

(5) *Prices*

(79) Based on an assessment of the Community industry's prices established by MWO category as described in recital 9, average prices on the Community market decreased continuously, declining by more than 11 % over the period from 1991 to and including the investigation period.

(6) *Stocks*

(80) The stocks of MWOs of the Community industry declined by 23 % over the two years 1989 and 1990, but substantially increased up to and including the investigation period.

(7) *Profitability*

(81) The financial results of the Community industry for its sales of MWOs in the Community market deteriorated substantially from an average profitability in the years 1989 to 1991 to substantial and increasing financial losses during 1992 and the investigation period. The financial results expressed in index form with 1989 as the base year decreased from a level of 100,0 in 1989, 40,8 in 1990 and 133,4 in 1991 to losses of −13,6 in 1992 and −76,0 during the investigation period. The financial losses incurred during the investigation period have reached a level in absolute terms that puts the viability of the Community industry at risk. It has been established during the investigation that the deterioration of the financial results of the Community industry is the result of its decreasing MWO turnover. Indeed, while sales of the Community industry in volume terms have declined less markedly together with the market share measures in volume terms, sales in value terms have decreased as the industry has attempted to adjust its MWO sales prices to those of the imports concerned. As has been established in recital 74, the prices of these imports have consistently and substantially undercut those of the Community industry. It has been the Community industry's strategy to attempt to match prices of the imports concerned in order to maintain its market position.

(8) *Investment*

(82) As far as investments are concerned, they were substantial during the years 1989 to 1992 reflecting the efforts of the Community industry to improve its efficiency and market presence. Indeed, investment was substantial as compared to total turnover and costs of the Community industry. However, the considerably deteriorating financial results in 1992 and in the investigation period have not allowed the Community industry to maintain the vital investment at the same level in the investigation period. It should be noted that, for the purpose of the present assessment, the Commission has not taken into account investment made by AEG as a newly established producer in the Community described in recital 75.

(f) Arguments raised concerning injury

(83) The majority of the producers/exporters and the FTA put forward the claim that, on the basis of figures provided in the complaint, market shares, sales and production volume of the European industry increased, thus showing that the industry did not suffer any injury.

With respect to the above argument, it should be noted that the complaint contained *prima facie* evidence only and that the information submitted concerning companies operating in the Community did not sufficiently differentiate between the complainant companies and other operators. The Commission has analysed in detail the status of various operators in the Community, the results of which are outlined under the heading (D) and has assessed on that basis which operators constitute, for the purpose of the present proceeding, the Community industry. It should be noted in this context that not all factors enumerated in Article 4 (2) (c) of the Basic Regulation have to show a negative development in order to conclude that a Community industry is injured. It suffices that a number of these factors show a negative trend. As set out above, the investigation has shown that this industry has been adversely affected in relation to a number of factors up to and including the investigation period, notably those concerning production, sales and market shares.

(g) Conclusion

(84) It has been established in the investigation that the Community industry, in the face of increasing imports of MWOs, in particular since 1992, originating in the four countries concerned, made at prices which substantially undercut the Community industry's prices, and despite considerable investments made with the aim of increasing productivity, saw its financial results deteriorate and turn into substantial and increasing losses.

Despite the establishment of a new producer and the acquisition of an additional brand name and distribution network by another producer, the Community industry's market share shows a decreasing trend since 1992 when stocks began to increase substantially.

Under these circumstances, based on the negative trends of the above economic indicators, it is concluded that the Community MWO industry has suffered material injury in the meaning of Article 4 of the Basic Regulation.

F. CAUSATION OF INJURY

(a) Effect of the dumped imports

(85) The increase in volume and market share of the dumped imports which undercut the prices of the Community industry since 1991 coincided with the deterioration of the financial results of the Community industry. At the same time, despite a market strategy, in particular concerning pricing policy, which should under normal circumstances have led to a consolidation of its market position, the Community industry's market share showed a declining trend since 1992.

(86) Moreover, the following developments are considered to be particularly significant:

— resale prices of Korean and Malaysian MWOs to the first independent buyer by related importers (the Chinese and Thai producers/exporters having no related importers throughout the investigation period), offering the same range of models and have the same distribution channels as the Community industry, decreased on average by almost 9 % over the period 1991 up to and including the investigation period. This coincides with an average price drop of 11 % on MWOs sold by the Community industry during the same period. The average resale price of importers related to Korean and Malaysian producers/exporters remained, since 1991, around 25 % lower than the average resale price of the Community industry,

— at the same time, despite considerable average price decreases of MWOs sold by the Community industry since 1991, and despite relatively stable average prices of MWOs for exports from the four countries concerned directly to unrelated customers located in the Community, the significant levels of price undercutting still found during the investigation period are a clear evidence that the depression of the Community industry's prices has been substantial since 1991.

(87) It is therefore concluded that dumped imports from the four countries concerned have considerably contributed to the injurious situation suffered by the Community industry.

(b) Other factors

(88) The Commission considered whether factors other than the dumped imports concerned, namely imports from other third countries, the behaviour of the Community industry itself, the development of the Community market concerned or any other factors could have caused the injury suffered by the Community industry.

(1) *Other imports*

(89) Several producers/exporters have argued that the present anti-dumping proceeding is discriminatory as imports from other third countries have also caused injury to the Community industry.

In that respect it should be noted that imports measured in volume from other third countries have increased by 6 % when comparing 1991 with the investigation period, compared to an increase in the volume of imports from the four countries concerned by these proceedings of 18 % over the same period and an increase in the total Community market volume of 7 %.

In conclusion, despite an increase in market share of imports originating in certain countries as discussed below, the overall market share held by imports into the Community from countries other than those covered by the present anti-dumping proceeding has decreased in the above period.

When considering individual countries which have been exporting MWOs to the Community, the following trends appeared:

— Japan: imports have continuously decreased since 1991, to reach a market share of 5 % during the investigation period,

— Sweden and United States of America: imports from both countries increased by more than the increase in market volume since 1991. Correspondingly the market share of Swedish imports also increased up to the investigation period to around 8 % and the United States market share to around 4 %,

— other third countries (Turkey, Taiwan, Singapore, Hong Kong): Each of these countries individually had market shares of the Community market below 1 %.

(90) It was established that the average import price of MWOs originating in Japan, Sweden and the United States of America was substantially higher than import prices of MWOs originating in the countries concerned by the present anti-dumping

proceeding and for the three above countries no indications were available to the Commission that suggest that the imports concerned were made at dumped prices.

(2) *Other, non-complaining, Community producers*

(91) As far as the development of the situation of other companies located in the Community which did not support the complaint is concerned (see heading (D)), their market position has declined substantially since 1989. Their market share was 19 % in 1989, declining to 14 % in 1991 and further declining to 10 % during the investigation period.

(3) *Behaviour of Community industry*

(92) A number of producers located in the countries subject to investigation have put forward the claim that the injury allegedly suffered by the Community industry must, to a certain extent, be attributed to errors made by the Community industry and, as such, should not be attributed to the dumped imports.

It has been contended in this context that the financial losses suffered by the Community industry were due to the acquisitions by Moulinex of other companies and especially Krups, and the financing costs resulting from these acquisitions.

The investigation carried out in this respect showed that the increase in financing costs incurred by Moulinex due to the acquisition of Krups was minimal, and would under normal circumstances have been compensated by a margin on increasing turnover generated via the distribution channels of Krups. That assessment has been confirmed by the relatively positive development of the situation of the Community industry from 1990 to 1991 as shown in recital 81. The other acquisitions referred to by the exporters took place at an even earlier time and had no apparent negative impact on the results during the investigated period.

(93) Secondly, it is alleged that the factories of the main Community producer are old and inefficient. In this respect the Commission refers to the high level of investments made into state-of-the-art production lines up to and including 1992.

(94) A third argument is that exchange rate fluctuations, the magnitude of which were significant in the Community in 1992, caused injury to the Community industry.

Although it cannot be denied that exchange rate fluctuations, mainly in the United Kingdom, Spain and Italy had an impact on the results of the Community industry, the investigation showed that although these markets are significant in overall volume, they are not the most important markets for the Community industry, and that therefore the effect of these fluctuations remained minimal.

(c) **Conclusion**

(95) In these circumstances, the Commission has concluded that, for the purposes of the provisional findings, notwithstanding the possible existence of certain other relatively minor causes of injury, dumped imports originating in China, Korea, Malaysia and Thailand, when taken in isolation, have, in view of their low prices and their substantial and rising market share, caused material injury to Community industry.

G. COMMUNITY INTEREST

(96) The purpose of anti-dumping measures is to eliminate the trade distorting effects of injurious dumping and to restore effective competition which, as such, is in the interest of the Community.

(97) During the present proceeding it has been established that, as a result of imports at dumped prices, the viability of the Community industry is threatened, in particular due to its very precarious financial situation. Failure to take provisional measures would aggravate that situation and might lead to the disappearance of production of MWOs by the complaining industry.

(98) Furthermore, it should be noted that the adverse impact of such a development would not be restricted to the microwave oven production sector, but would also have a serious impact on the suppliers of components and spare parts to this sector. It could also indirectly affect the whole sector of household appliances by depriving it of an important part of its business, thus threatening the viability of the whole sector as far as production and distribution channels are concerned.

(99) One exporter raised the argument that the imposition of measures is not in the Community interest because Korean imports offer an alternative source of supply and a limitation of this source would limit the choice on the Community market.

In view of the large number of suppliers in the market, both operating inside the Community and in third countries, it is not considered realistic that the imposition of measures at the proposed level will restrict the range of MWOs available to consumers or fair price competition between the different brands. Therefore the claim put forward by the producer does not seem to be justified.

(100) The provisional measures might affect the market shares and business of those importers who have to a large extent benefited from the unfairly low dumped import prices, but such an effect would not harm the Community interest as a whole, because it should normally have a positive effect on those distributors which have suffered from the unfair competition.

(101) One producer related to one of the exporters concerned also argued that as it was producing MWOs in the Community, it should not be penalized without justification because it made considerable investments in the Community. The Commission, however, is of the opinion that investment in the Community cannot be considered as a justification to import at dumped prices and consequently to inflict injury on the Community industry while being shielded from the injurious effect of these imports through a relationship with the exporter concerned.

(102) In conclusion the Commission considers that it is in the general interest of the Community to impose anti-dumping measures concerning imports of MWOs originating in China, Korea, Thailand and Malaysia.

H. PROVISIONAL DUTY

(103) 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 eleminate the injury sustained by the Community industry.

(104) Since the injury consists principally of price undercutting, price depression and, as a consequence, decreasing market shares and substantial financial losses, the removal of such injury requires that the industry should be put in a position where prices can be increased to profitable levels, thus re-establishing effective conditions of competition.

In calculating the necessary price increase, the Commission considered that the actual prices of these imports had to be compared to selling prices that reflect the costs of production of the complaining producers plus a reasonable amount of profit.

(105) To this end, the Commission used the costs of manufacturing of the complaining producers. To these costs of manufacturing, the SG&A costs were added. As for the amount of profit, a margin of 5 % on turnover was considered to constitute the minimum required to ensure the viability of the Community industry.

The actual weighted average selling prices charged during the investigation period by the Community industry were compared to the values constructed as explained above, and increased if appropriate in order to achieve the overall minimum amount of profit required. The resultant prices thus established were compared with the average prices of the dumped imports used to establish undercutting.

The differences between these two prices, expressed on a weighted average basis and as a percentage of the free-at-Community-frontier price, were substantially above the dumping margins found for all of the producers concerned. Therefore, the provisional duties imposed should be limited to the dumping margins established.

(106) For the reasons outlined in rectial 17, a single duty has been established for all producers in the People's Republic of China.

(107) In establishing the level of duty for producers in the Republic of Korea which neither replied nor made themselves known, it is considered appropriate that, given the high level of cooperation, the rate of the duty be based on the highest dumping margin determined with regard to a single producer which had cooperated in the investigation for this country (see recital 35).

In the case of Malaysia, it was considered appropriate to base the rate of the duty on the dumping margin determined with regard to the sole producer which had cooperated (see recital 45).

As for producers in Thailand who neither replied nor made themselves known, it is considered appropriate that, given that the investigation indicated a high level of non-cooperation, the rate of the duty be based on the highest dumping margin with regard to an individual MWO segment in which the cooperating Thai producer made significant export sales (see recitals 54 to 56).

(108) On the basis of the above, provisional anti-dumping duties, expressed as a percentage of the free-at-Community-frontier price, should be imposed as follows:

— People's Republic of China:	
all imports	20,8 %
— Repulic of Korea:	
— Daewoo	24,8 %
— LG	32,8 %
— Korea Nisshin	30,5 %
— Samsung Korea	4,8 %
— other companies	32,8 %

— Malaysia :

— Samsung Malaysia 31,7 %

— other companies 31,7 %

— Thailand :

— Acme 20,3 %

— other companies 31,8 %.

(109) In the interests of sound administration, a period should be fixed within which the parties concerned may make their views known and request a hearing. Furthermore, it should be noted that all findings made for the purpose of this Regulation are provisional and may reconsidered for the purpose of any definitive duty which the Commission may propose.

I. DEVELOPMENTS AFTER THE INVESTIGATION PERIOD

(110) A company located in a new Member State informed the Commission in December 1994 that it had taken over one of the two Chinese MWO producers which had cooperated in the present proceeding. This company requested the Commission to take this development into consideration and claimed in particular that the imposition of anti-dumping measures was not warrented. The company claimed that it had not been injured and that it produced substantial volumes of MWOs in the enlarged Community. In the event that the Commission should nevertheless conclude that the imposition of anti-dumping measures was warranted, the company claimed that the Chinese producer concerned should be granted individual treatment.

In respect of the claims of the above company, the Commission notes the following :

— It is the consistent practice of the Community institutions, confirmed by the European Court of Justice, not to take into account developments which occurred after the investigation period. Indeed, in accordance with the provisions of the Community anti-dumping legislation (Article 7 (1) (c) of the Basic Regulation), the conclusions reached in anti-dumping proceedings are based on the situation prevailing in the investigation period, generally a one year period, ending prior to the official initiation of the proceeding.

This evaluation of a situation by reference to a defined period ensures that the detailed investigation, verification and analysis of the allegations put forward in an anti-dumping complaint can be carried out on the basis of ascertainable facts, in order to reach a reliable conclusion.

Not to limit the investigation to a particular reference period would result in a perpetuation of investigations, thereby preventing conclusions being based on verified information. This aspect is of particular importance in the present situation given the company's claims.

— On the basis of the unverified information submitted concerning the level of production of the company in question, the complainants still represent a major proportion of the Community industry, that is to say more than 40 % of total output. In this context, the Commission made a conservative estimate in determining whether the complainants represented a major proportion of the total Community output in accordance with Article 4 (5) of the Basic Regulation (see heading D). It should be noted furthermore, that the company may be excluded from the definition of the Community industry if it is shown that it has been shielded against the injurious effects of dumped imports, as discussed under the same heading.

— The Chinese producer which the company in question has allegedly acquired has not requested individual treatment during the investigation. The company has not submitted any information that would indicate that the approach proposed by the Commission at the provisional stage is unjustified.

In the light of the above, the Commission does not consider the claim put forward by the company to be justified but proposes to continue to examine the situation in the course of the present anti-dumping proceeding,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of microwave ovens falling within CN code 8516 50 00 originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand.

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

Country	Products manufactured by	Rate of duty	Taric additional code
People's Republic of China :		20,8 %	
Republic of Korea :	— Daewoo Electronics Co. Ltd	24,8 %	8829
	— LG Electronics Inc.	32,8 %	8830
	— Korea Nisshin Co. Ltd	30,5 %	8831
	— Samsung Electronics Co. Ltd	4,8 %	8832
	— other companies	32,8 %	8833
Malaysia :	— Samsung Electronics (M) SDN.BHD.	31,7 %	8834
	— other companies	31,7 %	8835
Thailand :	— Acme Industry Co. Ltd	20,3 %	8836
	— other companies	31,8 %	8837

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 apply to be heard orally within one month of the date of the 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.*

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

Done at Brussels, 5 July 1995.

For the Commission

Leon BRITTAN

Vice-President