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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 173/2000

of 24 January 2000

terminating the anti-dumping proceedings concerning imports of certain large aluminium electrolytic capacitors originating in Japan, the Republic of Korea and Taiwan

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 9(5) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. **Existing measures**

(1) By Regulation (EEC) No 3482/92 [2], the Council imposed definitive anti-dumping measures on imports of certain large electrolytic aluminium capacitors (hereinafter 'LAECs') originating in Japan. These measures took the form of *ad valorem* duties, ranging between 4,2 % and 75 %.

(2) By Regulation (EC) No 1384/94 [3], the Council imposed definitive anti-dumping measures on imports of LAECs originating in the Republic of Korea and Taiwan. These measures took the form of *ad valorem* duties, ranging between 10,7 % and 75,8 %.

2. **Grounds for the reviews**

Japan

(3) Following the publication of a notice of impending expiry [4] of the anti-dumping measures applicable on imports originating in Japan, the Federation for Appropriate Remedial Anti-Dumping (FARAD) lodged a request for a review, on behalf of Nederlandse Philipsbedrijven BV (The Netherlands), now BC Components International BV, and BHC Aerovox Ltd. (United Kingdom), pursuant to Article 11 (2) of Regulation (EC) No 384/96 (hereinafter referred to as the 'Basic Regulation').

(4) Furthermore, the Commission decided, on its own initiative, to initiate an interim review of the same anti-dumping measures pursuant to Article 11(3) of the Basic Regulation in order to consider the impact of changed circumstances in relation to technical developments for the product as well as market conditions on dumping and injury.

(5) Consequently, on 3 December 1997, the Commission announced by a notice published in the *Official Journal of the European Communities* [5] the initiation of a review of the anti-dumping measures applicable to imports of LAECs originating in Japan (hereinafter the 'review on Japan').

Republic of Korea and Taiwan

(6) Further to the initiation of the review on Japan and further to the initiation of a new investigation concerning imports of LAECs originating in the United States of America and Thailand [6], the Commission also decided, on its own initiative, to initiate a review of the anti-dumping measures applicable to imports originating in the Republic of Korea and in Taiwan, pursuant to Article 11(3) of the Basic Regulation.

(7) This review was initiated on the grounds that available information indicated an increased market penetration in the Community market of the product concerned originating in the Republic of Korea and in Taiwan, despite the anti-dumping measures imposed. Moreover, in view of the internationally interdependent character of the market for this product and the interrelationship of the companies involved in this field, it was considered that this review together with the abovementioned review on Japan and the new proceeding concerning Thailand and USA, would allow the Commission to form a better overall view of the impact on the Community industry of the imports originating from the main exporting countries.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).
[2] OJ L 353, 3.12.1992, p. 1. Regulation as amended by Regulation (EC) No 2593/97 (OJ L 351, 23.12.1997, p. 6).
[3] OJ L 152, 18.6.1994, p. 1.
[4] OJ C 168, 3.6.1997, p. 4.
[5] OJ C 365, 3.12.1997, p. 5.
[6] OJ C 363, 29.11.1997, p. 2.

(8) The review investigation (hereinafter the 'review on Korea and Taiwan' was initiated in April 1998 by the publication of an opening notice in the *Official Journal of the European Communities* [1].

3. **Investigations**

(9) The Commission officially advised the producers/exporters and importers known to be concerned as well as their associations, the representatives of the exporting countries concerned, the Community producers which requested the review on Japan, as well as known users, about the initiation of the reviews. Interested parties were given the opportunity to submit their views in writing and to request a hearing within the time limits set out in the notices mentioned above.

(10) A number of producers/exporters in the countries concerned, as well as one Community producer, along with a number of users and importers in the Community, made their views known in writing. All parties, who so requested within the above time limits and showed that there were particular reasons why they should be heard, were granted the opportunity to be heard.

(11) The Commission sent questionnaires to parties known to be concerned and to all the other companies which made themselves known within the deadlines set out in the above notices. Replies were received from one Community producer, three producers/exporters in Taiwan, four producers/exporters in Japan, as well as from their related importers in the Community. The Commission also received a reply from one unrelated importer in the Community which was considered meaningful and complete.

(12) Verification visits with respect to the review investigations were carried out at the premises of the following companies:

Community producer

— Nederlandse Philipsbedrijven BV (Zwolle, The Netherlands) and its related company, Österreichische Philips Industrie, GmbH (Klagenfurt, Austria).

On 1 January 1999, these two companies were sold to a consortium of equity investors and formed, together with a number of other Philips entities, a new company, called BC Components BV. This company took over from the Philips Group all activities in the manufacturing and sales of LAECs. Consequently, these two companies will hereinafter jointly be referred to as 'BC Components'.

Producers/exporters in the countries concerned

— Nippon Chemi-con (Tokyo, Japan),

— Nichicon Corporation (Kyoto, Japan),

— Rubycon Corporation (Ina, Japan),

— Hitachi AIC Inc (Tokyo, Japan),

— Teapo Electronic Corp. (Taipei, Taiwan),

— Lelon Electronics Corp. (Taichung, Taiwan),

— Kaimei Electronic Corp. (Taipei, Taiwan).

Unrelated importer in the Community

— Beck Elektronik Bauelemente GmbH (Nuremberg, Germany).

Related importers in the Community

— Nichicon UK (Europe) Ltd (Camberley, United Kingdom),

— Rubycon Corporation UK branch (South Ruislip, United Kingdom),

— HPC Distribution (Krefeld, Germany),

— Europe Chemi-con (Nuremberg, Germany),

(13) The Commission sought and verified all information deemed necessary for the purposes of its conclusions in both review investigations.

(14) All the parties concerned were informed of the essential facts and considerations on the basis of which the conclusions of these reviews were made. All parties were granted a period within which to make representations. The representations received were taken into consideration and where appropriate, the findings have been changed accordingly.

(15) The reviev on Japan could not be completed within the normal period of twelve months provided for in Article 11(5) of the Basic Regulation, owing to the fact that, as a result of the updated product definition, a full investigation on dumping, injury and causation was necessary. The timing of the review on Korea and Taiwan was aligned on that of the review on Japan.

(16) The investigation of dumping in the review on Japan covered the period from 1 October 1996 to 30 September 1997 (hereinafter the 'Investigation Period', or 'IP'). The investigation of dumping in the review on Korea and Taiwan covered the period from 1 January 1997 to 31 December 1997.

The examination of injury for both investigations covered the period from 1 January 1993 to 31 December 1997, to take account of the existence of two differing investigation periods for dumping.

B. **PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT**

1. **Product under consideration**

(17) The product under consideration is certain electrical capacitors, non-solid, aluminium electrolytic, with a CV product (capacitance multiplied by rated voltage) between 8 000 and 550 000 micro-coulombs (μC), at a voltage of 160 V or more, currently classifiable under CN code ex 8532 22 00. As explained below, the term 'large' should no longer be used to describe these products. However, for practical reasons, they are referred to as 'LAECs', as was done in the original investigations concerning Japan, the Republic of Korea and Taiwan.

[1] OJ C 107, 7.4.1998, p. 4.

(18) Capacitors are electronic components which can store and subsequently release electric energy. These components are used in the electric circuits of virtually all types of electronic equipment, in the computer, telecommunications, instrumentation, industrial, military, automotive and other consumer industries. Capacitors covered by these reviews (i.e. LAECs) are particularly used in power supply circuits in durable consumer electronics such as television sets, video cassette recorders and personal computers.

(19) LAECs are produced in many different types depending, *inter alia*, on their capacitance, the rated voltage, the maximum operating temperature, the type of terminal and their dimensions. Despite these differences, all these types share the same basic physical and technical characteristics and uses. They were, therefore, considered as a single product.

2. **Update of the product coverage in the review on Japan**

(20) The product definition in the original investigation concerning Japan, as set out in Regulation (EEC) No 3482/92, was restricted to certain large electrical capacitors, non-solid, aluminium electrolytic, with a CV product between 18 000 and 310 000 μC at a voltage of 160 V or more, with a diameter of 19 mm or more and a length of 20 mm or more.

However, in the opening notice concerning the review on Japan, it was outlined that this original definition should be adapted to cover all LAECs, i.e. the same range of products as in the proceeding concerning the Republic of Korea and Taiwan. This was necessary in view of changed circumstances related to new technical and market developments of the product under consideration.

(21) The review confirmed these changed circumstances. Firstly, it was found that technological evolution has led to the development of LAECs with increasingly higher capacitance and hence CV product, in increasingly smaller can sizes. Secondly, reported improvement in the electricity consumption of certain power supplies have created a new demand for LAECs with lower CV product (i.e. lower capacitance for a given voltage). Thirdly, it was found that, for a given CV product, LAECs of different sizes were offered on the Community market.

As a result of these developments, it was found that a whole range of imported LAECs originating in Japan fell outside the original product definition concerning this country. They were therefore exempt from anti-dumping measures, even though they were alike in all basic physical and technical characteristics and uses to those covered by this definition (and hence by the anti-dumping measures). In addition, since several can sizes could be offered for the same CV product, and since the CV product chiefly determines the types of applications in which LAECs are used, it was considered that there were no longer grounds for differentiating between LAECs according to their size. The term 'large' should no longer be used to identify these products.

(22) For all these reasons, it was confirmed that the product definition in the review on Japan should be adapted to cover all LAECs as defined above, i.e. certain electrical capacitors, non-solid, aluminium electrolytic, with a CV product (capacitance multiplied by rated voltage) between 8 000 and 550 000 micro-coulombs (μC), at a voltage of 160 V or more.

3. **Like product**

(23) A number of Japanese producers/exporters claimed that, because of differences in size, lifetime or terminal configuration, the exported products and those produced in the Community were not 'like products'.

(24) However, it was established that, despite these differences, which are minor, the LAECs sold on the domestic market of the countries concerned, those exported from these countries into the Community and those produced and sold in the Community by the Community industry used the same basic technology and were all produced according to world-wide applicable industry standards. Therefore, all these products had the same basic physical and technical characteristics. They also had the same types of applications and were all used to perform the same types of functions. Therefore, all these products were interchangeable and in direct competition with each other, on a type-by-type basis.

(25) Consequently, the claim was rejected and it was concluded that the LAECs sold on the domestic market of the countries concerned, those exported from these countries into the Community and those produced and sold in the Community by the Community industry were to be considered to be like products within the meaning of Article 1(4) of the Basic Regulation.

C. **DUMPING**

1. **Japan**

(26) Since the circumstances regarding dumping had significantly changed in view of the updating of the product definition, the Commission conducted a full investigation, which led to the calculation of a new dumping margin for the IP.

(27) Four companies replied to the questionnaire for producers/exporters.

Normal value

(28) As far as the determination of normal value is concerned, the Commission first established, for each producer/exporter, whether its total domestic sales of LAECs were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the Basic Regulation, domestic sales were considered representative when the total domestic sales volume of each producing company was at least equal to 5 % of its total export sales volume to the Community.

Subsequently, those types of LAECs were identified which were sold domestically by those companies having representative domestic sales and which were identical or directly comparable to the types sold for export to the Community.

(29) For each of the types sold by the producers/exporters on their domestic markets and found to be directly comparable to types sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the Basic Regulation. Domestic sales of a particular type were considered sufficiently representative when the total domestic sales volume of LAECs of that type during the IP represented 5 % or more of the total sales volume of LAECs of the comparable type exported to the Community.

(30) An examination was also made as to whether the domestic sales of each type could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the type in question. In cases where the sales volume of LAECs sold at a net sales price equal to or above the calculated cost of production represented 80 % or more of the total sales volume, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of LAECs represented less than 80 % but 10 % or more of the total sales volume, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only.

(31) When the requirements set out above were met, normal value was based for each type on the basis of the prices paid or payable, in the ordinary course of trade, by independent customers in the domestic market of the exporting country, as set out in Article 2(1) of the Basic Regulation.

(32) In cases where the volume of profitable sales of any type of LAECs represented less than 10 % of the total sales volume, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(33) On the basis of the method referred to above, it was possible, for approximately 60 % of the types sold for export to the Community, to establish normal value on the basis of the domestic price of comparable types in accordance with Article 2(2) of the Basic Regulation. Wherever domestic prices of a particular type sold by a producer/exporter could not be used, constructed normal value had to be used in preference to domestic prices of other similar types or to domestic prices of other producers/exporters, due to the number of different types and the variety of factors affecting them. Using domestic prices of other types would have meant in this case making numerous adjustments, most of which would have had to he based on estimates. It was therefore considered that constructed value formed a more appropriate basis to establish normal value.

(34) Consequently in accordance with Article 2(3) of the Basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary a reasonable percentage for selling, general and administrative expenses (SG&A) and a reasonable margin of profit. To this end, the Commission examined whether the SG&A incurred and the profit realised by each of the producers/exporters concerned on the domestic market constituted reliable data. Actual domestic SG&A expenses where considered reliable when the domestic sales volume of the company concerned could be regarded as representative.

(35) The domestic profit margin was determined on the basis of domestic sales made in the ordinary course of trade.

For two of the Japanese companies it was found that the information provided regarding the cost of production of LAECs sold in the domestic market did not accurately reflect costs incurred during the IP. Consequently, it was necessary to use, in part, the facts available in order to correct the inaccurate information, in accordance with Article 18(1) of the Basic Regulation. For this purpose, in one case the Commission collected and verified on spot the information used by the company in its actual cost system and established an adjustment to take account of the consistent underestimation of the costs reported in the questionnaire reply. For the other company, some of the information provided in the questionnaire reply, concerning production costs in one factory, was found not to relate to the investigation period. It was therefore decided to exclude sales of products made in this factory from both the profitability and dumping determinations, in accordance with Article 18(1) of the Basic Regulation.

For another company, it was found that the information contained in the reply to the questionnaire regarding domestic sales was unreliable, since it did not include sales of certain types and it included numerous sales to domestic traders destined for subsequent export and sales to related companies for their own consumption. It was therefore decided to use, in accordance with Article 18(1) of the Basic Regulation, such facts as were available in order to rectify the partial non cooperation. Hence, the transactions destined for re-export and the sales to related companies were excluded. For the unreported types sold domestically a profit margin was established by using the domestic types with a higher profitability.

Export price

(36) In all cases where LAECs were exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the Basic Regulation, namely on the basis of export prices actually paid or payable.

(37) Where the export sale was made to a related importer, the export price was constructed pursuant to Article 2(9) of the Basic Regulation, namely on the basis of the price at which the imported products were first resold to an independent buyer.

In such cases, adjustments were made for all costs incurred between importation and resale and for profits accruing, in order to establish a reliable export price at the Community frontier level. On the basis of the information available from a cooperating unrelated importer, this profit was set at around 5 %. This was considered to be a conservative estimate for the sector concerned.

(38) Pursuant to Article 11(10) of the Basic Regulation, in those cases where the export price had to be constructed, it was examined whether the applicable anti-dumping duty was duly reflected in the resale prices and the subsequent selling prices in the Community, in order to decide if the amount of duties paid should be deducted from the price. For this purpose, the companies were requested to provide conclusive evidence thereof.

(39) Two of the Japanese producers/exporters provided conclusive evidence that the applicable anti-dumping duty was duly reflected in their resale prices and in subsequent selling prices in the Community. Consequently, it was decided not to deduct the amount of duties paid from the relevant export prices, pursuant to Article 11(10) of the Basic Regulation. The remaining companies failed to provide conclusive evidence that the duty was reflected in resale prices and subsequent selling prices and the Commission consequently deducted the anti-dumping duty from the resale prices.

Comparison

(40) For the purposes of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the Basic Regulation.

Accordingly, allowances for differences in import charges, transport, insurance, handling charges, packing costs, credit, commissions and discounts have been granted where applicable and justified, and when the party concerned could demonstrate the effect of any alleged difference on prices and price comparability.

(41) The request for a level of trade adjustment made by one of the producers/exporters to take into account an alleged difference in advertisement costs was rejected in the absence of any difference between domestic and export levels of trade.

(42) Requests for salesmen salaries' adjustments made by two producers/exporters were also rejected since the companies failed to demonstrate any effect on price comparability.

Dumping margins

(43) According to Article 2(11) of the Basic Regulation, the weighted average normal value by type was compared with the corresponding weighted average export price.

(44) The comparison, as described above, shows the existence of dumping in respect of all producers/exporters that cooperated with the Commission. The dumping margins expressed as a percentage of the cif import price at the Community border are the following:

— Hitachi AIC Inc: 25,5 %,

— Rubycon Corporation: 5,4 %,

— Nichicon Corporation: 20,5 %,

— Nippon-Chemicon: 23,1 %.

(45) For non cooperating companies, a residual dumping margin was determined in accordance with Article 18 of the Basic Regulation, on the basis of the facts available.

Due to the high level of cooperation from Japanese producers/exporters it was decided to establish the residual dumping margin at the level of the highest dumping margin established for a cooperating company.

Expressed as a percentage of the CIF import price at the Community border, the residual margin is 25,5 %.

2. **Taiwan**

(46) Since the circumstances regarding dumping have changed significantly, the Commission conducted a complete investigation, which led to the calculation of new dumping margins.

Level of cooperation

(47) Three companies replied to the questionnaire for producers/exporters.

One of the three companies was found to have only traded the product concerned to the Community. Considering that this company had not produced the product sold to the Community, no individual assessment of its situation with respect to dumping could be made.

Normal value

(48) The procedures and methodologies followed by the Commission to assess the normal value of products originating in Taiwan were the same as those used for Japan and set out above, except where, in accordance with Article 18 of the Basic Regulation, the facts available were used.

(49) For both producers/exporters in Taiwan, it was found that the information provided in the questionnaire response regarding domestic sales was unreliable, since they failed to report a considerable number of sales of LAECs subject to the investigation. It was therefore decided for both companies to base normal value on facts available in accordance with Article 18 of the Basic Regulation. For this purpose, it was decided to take account of the amount of profit attributed to the non reported domestic sales by applying the method described above for Japan.

(50) On the basis of the method referred to above, it was possible for a certain number of LAEC types sold for export to the Community, to establish normal value on the basis of the domestic price of comparable types in accordance with Article 2(2) of the Basic Regulation.

For all other LAEC types sold for export to the Community, normal value had to be constructed.

Export price

(51) The procedures and methodologies followed in assessing the export price of products originating in Taiwan were the same as those used in the review on Japan and set out above.

(52) All sales of LAECs made by the Taiwanese companies on the Community market were to independent importers in the Community. Consequently, the export price was established by reference to the prices actually paid or payable.

Comparison

(53) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the Basic Regulation.

(54) Accordingly, allowances for differences in transport, handling, ancillary and credit costs, have been granted where applicable and justified, namely when the party concerned could demonstrate the effect of any alleged difference on prices and price comparability.

Dumping margins

(55) According to Article 2(11) of the Basic Regulation, the weighted average normal value by type was compared with the corresponding weighted average export price.

(56) The comparison, as described above, shows the existence of dumping in respect of all producers/exporters that cooperated with the Commission. The dumping margins expressed as a percentage of the cif import price at the Community border are the following:

— Teapo Electronic Corporation: 8,1,

— Kaimei Electronic Corp.: 13,8 %.

(57) In view of the high level of non cooperation, the residual dumping margin was based on the highest dumped product for the company with the highest dumping margin, expressed as a percentage of the cif import price at the Community border. It was considered that this was the most appropriate method to avoid giving a bonus for non cooperation.

Expressed as a percentage of the cif import price at the Community border, the residual margin is 39,7 %.

3. **Republic of Korea**

(58) No company replied to the questionnaire for producers/exporters. In view of this lack of cooperation, the dumping margin had to be established in accordance with Article 18 of the Basic Regulation on the basis of the facts available. In this respect it should be noted that the information available was limited. As far as the export prices from the Republic of Korea were concerned, statistical information was only available for a wider product range. Moreover, since this product is commonly sold by the domestic producers/exporters directly to industrial users and not via traders it was not possible to obtain reliable price information on the Korean domestic market. It was therefore decided to take the highest dumping margin found for a model sold in representative quantities in one of the other countries concerned, i.e. Japan.

(59) As a result, the residual dumping margin for the Republic of Korea, expressed as a percentage of the cif import price at the Community border, was set at 76,2 %.

D. **COMMUNITY INDUSTRY**

1. **Composition of the Community industry**

(60) The two reviews cover the same product and are based on data largely pertaining to the same time periods. Therefore, it is considered appropriate to investigate them simultaneously. Consequently, the same producers in the Community constitute the Community production and the Community industry in both reviews.

(61) Four large producers of LAECs, i.e. BC Components, BHC Aerovox Ltd (United Kingdom), Vishay Roederstein GmbH (Germany) and Siemens-Matsushita Components GmbH & Co. KG (Germany), as well as some small to medium-sized producers, were established in the Community.

Three producers supported the request for review on Japan: BC Components, BHC Aerovox Ltd and Vishay Roederstein GmbH. However, the two latter producers did not cooperate with the Commission and were, therefore, not considered part of the Community industry.

(62) As indicated above, BC Components is a new company, incorporated after the end of the IP. It has, notably, taken over the activities of Philips components BV in the manufacturing and sales of LAECs. This takeover was made on a going concern basis, in particular as regards the manufacturing and sales of LAECs in the Community. Moreover, BC Components BV, expressed its support for both reviews.

(63) Siemens-Matsushita Components GmbH & Co. KG (hereinafter 'Siemens-Matsushita') and the other small and medium-sized producers were not among the producers which requested the review on Japan. Moreover, these companies did not make themselves known after the publication of the notices announcing the initiation of the reviews. Therefore, in accordance with Article 5(4) of the Basic Regulation, these producers could not be considered part of the Community industry.

(64) One Japanese producer/exporter contested the fact that Siemens-Matsushita was not contacted by the Commission and the fact that this company was excluded from the Community industry. These claims could not be accepted because, as stated above, further to the publication of the above notices, Siemens-Matsushita did not make itself known as an interested party and did not express any interest in cooperating. Also, it did not oppose its exclusion from the Community industry.

In addition, available information indicated that Siemens-Matsushita is a joint venture owned in equal parts by Siemens AG (Germany) and the Matsushita Electric Industrial Ltd Group (Japan), a non cooperating Japanese producer/exporter. Siemens AG holds control of the corporate management and holds the casting vote in the event of a tied vote. Siemens-Matsushita was reported not to have imported any LAECs originating in the countries concerned and to sell its own production of LAECs on the Community market under its own brand. However, through its 50 % shareholding, the Matsushita Electric Industrial Ltd Group is clearly in a position to exert control or restraint on Siemens-Matsushita. Available information also indicated that Siemens-Matsushita benefited from the shared know-how of its two shareholders. These two companies are therefore related within the meaning of Article 4(2) of the Basic Regulation.

(65) The important shareholding of Matsushita Electric Industrial Ltd in Siemens-Matsushita and the abovementioned shared know-how lead to the conclusion that Siemens-Matsushita is in a fundamentally different position as compared to that of BC Components. Therefore, in accordance with Article 4(1)(a) of the Basic Regulation, it was considered appropriate to exclude Siemens-Matsushita from the definition of the Community industry.

(66) It should finally be underlined that Siemens-Matsushita was already excluded from the definition of the Community industry in the original investigations concerning imports from Japan and imports from the Republic of Korea and Taiwan. This approach has not been disputed in either of these two investigations.

(67) A number of Japanese producers/exporters claimed that BC Components should be excluded from the Community industry because, until the end of the IP, companies which were related to it at that time, in particular Philips Consumer Electronics BV, imported significant quantities of LAECs from Japan.

(68) The Commission examined whether the fact that Philips Consumer Electronics BV imported LAECs from Japan was a sufficient reason to exclude BC components, at that time the only LAECs manufacturer within the Philips Group, from the Community industry.

It was found that almost all imports made by the Philips Group were not destined for further resale, but were incorporated by Philips Consumer Electronics BV in its own production of electronic products. Moreover, the investigation revealed that the majority of these imports (more than 85 %) were of 'radial' products either not yet produced by BC Components or still in a start-up phase of production. In these circumstances, Philips Consumer Electronics BV had no other choice but to be supplied by producers/exporters in the countries concerned.

It was also found that the remaining imports made by Philips Consumer Electronics BV were products directly competing with BC Components' production and represented an insignificant share of the total imports into the Community. It was also noted that Philips Consumer Electronics BV, despite the above imports, was the biggest traditional customer of BC Components, since it represented approximately 40 % of its total sales in the IP. The choice of Philips Consumer Electronics BV to be partly supplied by producers/exporters in the countries concerned was made possible by the structuring of the Philips Group into different profit centres which are all independent and free to choose their suppliers, notably when it is necessary to complete or supplement the range of products offered within the Philips Group (as in the case of the 'radial' LAECs).

(69) For the above reasons, the imports made by Philips Consumer Electronics BV were considered as normal commercial behaviour until such time as fair conditions of competition would be restored on the Community market.

(70) BC Components, represented a major proportion (41 %) of the total estimated Community production.

(71) Based on Article 4(1)(a) of the Basic Regulation, the estimated production of Siemens Matsushita was not taken into account in the determination of the total Community production, for the purposes of the assessment of the representativity of the Community industry. One cooperating Japanese producer/exporter claimed that, had the estimated production of Siemens-Matsushita been taken into account, BC Components would not have had sufficient standing to be representative of the total Community production.

However, it was found that even if the production of Siemens-Matsushita, as established on the basis of the information submitted by the cooperating parties had been included in the determination of the total Community production, the Community industry would still have represented a major proportion of this production, pursuant to Article 5(4) of the Basic Regulation.

(72) It was therefore confirmed that BC Components constituted the Community industry in both reviews, within the meaning of Article 4(1) of the Basic Regulation.

E. **INJURY**

1. **Community consumption**

(73) Consumption was computed as the sum of the verified sales made by the Community industry, an estimate of the sales made by the other producers located in the Community and an estimate of the volume of imports into the Community.

(74) In estimating the volume of imports, account was taken of the fact that the CN code within which LAECs fall embraces other types of capacitors not covered by the present reviews. Therefore, no precise figures concerning total imports of LAECs could be obtained from Eurostat statistics. Consequently, the volume of imports into the Community was based on an estimate provided by the Community industry. This estimate was adjusted, for the countries concerned, to take account of the verified information submitted by the cooperating producers/exporters concerned. This approach was consistent with the one used in the original investigations.

(75) On the above basis, consumption increased between 1993 and 1995, from 78,8 million units to 91 million units, then slightly declined to 87,9 million units in the IP, but increased again to 90.8 million units in 1997. Overall consumption increased by 12 % over the period considered.

2. **Imports on the Community market from the countries concerned**

Cumulation of the dumped imports

(76) In view of the updating of the product definition in the review on Japan, it was considered appropriate to perform a full injury and causation analysis with respect to the imports originanting in that country. In addition, since the review on Korea and Taiwan is being considered simultancously with that on Japan, it was examined whether the effects of the imports originating in all the three countries concerned should be assessed cumulatively.

(77) As stated above, the dumping margins found in respect of all these three countries were above the de minimis level and the volume of imports originating in these countries was significant during the IP.

(78) As regards the conditions of competition, it was noted that the products imported from all the countries concerned and the Community produced products were alike in their basic physical and technical characteristics and in their end uses and that they were sold through comparable sales channels. The imported products and the Community produced products were therefore competing with each other. It was also found that the average prices of such imported products were all undercutting the Community industry's prices and were therefore exerting on the Community produced products similar conditions of competition. Moreover, the average prices of the imports subject to anti-dumping measures originating in all these countries also showed a similar increasing trend over the period considered, as did the average sales prices of the Community industry.

(79) It was therefore concluded that, in accordance with Article 3(4) of the Basic Regulation, the dumped imports from all the countries concerned should be examined on a cumulated basis.

Volume and market share of the cumulated dumped imports

(80) The volume of the cumulated dumped imports into the Community of LAEC originating in Japan, the Republic of Korea and Taiwan increased by 11 % over the period considered, i.e. from 33,3 million units in 1993 to 37,1 million units in the IP. At the end of 1997, the cumulated imports peaked at 38,9 million units. The cumulated market share of these imports decreased from 42,5 % in 1993 to 36,6 % in 1995 and then increased again to 42,2 % in the IP. At the end of 1997, this market share was 42,8 %. Overall, the market share of the cumulated imports remained stable.

Prices of the dumped imports

(81) The investigation has shown that the average sales prices of the dumped imports from the countries concerned were significantly below the sales prices of the Community industry.

(82) For the purposes of the determination of price undercutting, a comparison was made, on a type-by-type basis, between the prices charged by the producers/exporters concerned to unrelated importers in the Community or, where applicable, the prices of the producers/exporters' related importers to the first independent customers in the Community, on the one hand, and the prices of the Community industry to independent buyers, on the other. In the absence of any cooperation from interested parties from the Republic of Korea, the undercutting levels were established by applying the same methodology as for the dumping margin determination in respect to that country, i.e. the highest undercutting level found for cooperating Japanese producers/exporters. In the absence of reliable information from Eurostat (see below), this was considered to be the best information available.

(83) Imported and Community produced LAECs were compared on a type-by-type basis. Types were identified on the basis of the following criteria which basically influenced the sales prices and the customer's purchasing decision: the capacitance, the rated voltage, the operating temperature, the type of terminal and the size. Where, on the basis of all these criteria, no identical exported and Community produced types were found, closely resembling ones were used. In this way, 40 % to 70 % of exports by producers/exporters were covered.

(84) The price comparison was made on the basis of a selection of transactions representing approximately 95 % of all transactions made by the Community industry. The sales prices of the Community industry were adjusted, where necessary, to ex-works level. For the comparison of sales prices of export transactions made directly to unrelated customers, adjustments were also made to the producers/exporters' selling prices (CIF Community frontier) to take account of customs duty paid (including anti-dumping duties, if any) and an allowance in respect of post importation costs and profit. All prices were compared on an average-to-average basis, after excluding all discounts and rebates and at a comparable level of trade

(85) As a result of this comparison, the following significant weighted average price undercuting margins expressed as a percentage of the Community industry's prices, were found

— Japan betweenn 0 % a and 68,6 %, on average 32,2 %,

— Taiwan between 0 % and 60,0 %, on average 30,6 %,

— Republic of Korea: 68,6 %.

3. **Situation of the Community industry**

Sales volume and market share of the Community industry

(86) The volume of sales of the Community industry on the Community market increased between 1993 and 1995 from an indexed 100 to an indexed 121, and then decreased to an indexed 95 in the IP, i.e. an overall decrease of 5 % over the period considered. At the end of 1997, these sales increased to an indexed 97, showing a decline of 3 % compared to 1993.

(87) The market share held by the Community industry decreased from an indexed 100 in 1993 to an indexed 85 in the IP, i.e. a decline of 15 %. This market share remained stagnant at an indexed 84 at the end of 1997.

Production, capacity and capacity utilisation

(88) Production by the Community industry increased between 1993 and 1995 from an indexed 100 to an indexed 123, then decreased to an indexed 98 in the IP, and went up to an indexed 100 at the end of 1997. Although the output decreased only slightly over the period considered, it decreased by nearly 20 % towards the end of it, i.e. between 1995 and the IP.

(89) Capacity increased by 25 % between 1993 and 1995, remained stable through 1996 but then increased by a further 16 % in the IP and remained stable at the end of 1997. The increase in capacity between 1993 and 1995 was in line with the development of consumption on the Community market over that period of time. The increase in capacity in the IP was partly due to the development of a new range of so-called 'radial' LAECs.

(90) Assessed in the light of the development of production and capacity, capacity utilisation increased between 1993 and 1994, from an indexed 100 to an indexed 109, but declined steadily thereafter to an indexed 70 in the IP and an indexed 71 at the end of 1997.

Stocks

(91) The evolution of the stocks held by the Community industry showed an irregular trend. These stocks increased between 1993 and 1995 from an indexed 100 to an indexed 168, then declined in 1996 to an indexed 93 and increased again in the IP, to an indexed 252. The number of days of sales represented by the stocks held by the Community industry nearly tripled over the period considered, from 13 days in 1993 to 37 days in the IP. However. stocks decreased again at the end of 1997, to an indexed 113.

Evolution of sales prices of the Community industry

(92) The average sale prices of the Community industry to unrelated parties increased between 1993 and the IP by 16 %. However, these prices declined between 1995 and the IP by nearly 8 %. During the same period, the average prices of the dumped imports originating in Taiwan and the Republic of Korea increased as well, by respectively 28 % and 23 %. The average prices of the dumped imports originating in Japan remained overall stable between 1993 and the IP. However, while the prices of the products subject to anti-dumping measures increased significantly, those of the products not subject to such measures declined sharply, by approximately 40 %.

(93) The above evolution of the average selling prices of the Community industry and that of the dumped imports has to be seen in the light of the substantial increase in consumption during the period considered, the changes in product mix between years, the wide diversity of different types of LAECs and the corresponding diversity of sales prices, the introduction of new products on the Community market, which tend to have a higher sales price than older ones, as well as the effect of the imposition of previous anti-dumping measures on Japan (1992) and on Taiwan and South Korea (1994).

Profitability

(94) The financial results of the Community industry, expressed as a percentage of net sales, showed a loss of close to – 6 % in 1993. These results then improved and in 1995 the Community industry recorded a profit of close to 6 %. However, after 1995 the situation significantly deteriorated and it was found that in the IP and at the end of 1997 the Community industry was approximately at break-even point.

(95) It should be noted that the increase in profitability between 1993 and 1995 coincided with the period of time immediately following the imposition of anti-dumping measures on Japan and on the Republic of Korea and Taiwan. It also coincided with a period of growing consumption. All this had positive effects on the Community industry's sales, both in volume and in value, and on its production levels. On the other hand, the decline in profitability after 1995 should be mainly seen in the light of the Community industry's decline in sales and relative decline in average sales prices. The decline in sales triggered a significant drop in production and a decline in the usage of capacity installed, with a consequent increase of unit costs, due to the increased share of fixed costs in the unit cost of production.

Investments, employment and productivity

(96) Yearly investments made by the Community industry increased between 1993 and 1996 from an indexed 100 to an indexed 576. Investments were stopped in the IP. It should be noted that the investments made between 1993 and 1995 enabled the Community industry to increase capacity for the production of new LAEC types and to improve overall performance.

(97) Employment declined during the period considered by 22 %, as a result of higher efficiency and of a general restructuring, which was made necessary by declining financial results after 1995. At the end of 1997, employment levels were approximately at the same level as at the end of the IP.

(98) Productivity of the Community industry, measured as output per person employed, increased between 1993 and 1995 from an indexed 100 to an indexed 128, essentially as a result of the decline in employment and the increase in production levels. Productivity declined after 1995, due to the strong decrease in production, but went up again in the IP, in view of the continuous decline in employment. Overall, productivity increased by 26 % during the period considered.

Conclusion

(99) Between 1993 and the end of the IP, at a time of growing demand on the Community market (+ 12 %), the Community industry has experienced a drop in sales volume (– 5 %), market share (– 15 %), production (– 2 %), capacity usage (– 30 %) and employment (– 22 %).

Furthermore, at the end of the IP, the Community industry's financial situation, despite a brief improvement between 1993 and 1995, was still unsatisfactory and largely insufficient to maintain investments and research and development (a break-even situation was found for the IP).

(100) The negative developments suffered by the Community industry occurred primarily in the period between 1995 and the IP, when, in addition to a significant loss in sales volume, market share and output, profitability declined from a profit of approximately 6 % on turnover in 1995 to a break-even situation in the investigation period.

(101) The analysis of injury until the end of 1997, which was made to take account of the end date of the investigation period for dumping in the review on Korea and Taiwan, confirmed the above findings.

(102) In the light of the foregoing analysis, the Commission concluded that the Community industry suffered material injury within the meaning of Article 3(1) of the Basic Regulation.

F. CAUSATION OF INJURY

1. Effects of the cumulated dumped imports originating in Japan, the Republic of Korea and Taiwan.

(103) The decline in sales volume and market share suffered by the Community industry during the period considered coincided with a very significant increase in the cumulated dumped imports. Indeed, while the Community industry saw its sales and market share declining by 5 % and 15 % respectively, the cumulated dumped imports increased by 11 % and maintained their market share.

(104) This evolution is even more striking when looking at the period during which the Community industry suffered most strongly, i.e. between 1995 and the investigation period. During that period, the Community industry's sales declined by 22 %, while the volume of the dumped imports increased by 11 %. The market share held by the Community industry decreased by 19 %, while the market share of the imports increased from 36,6 % to 42,2 %, i.e. by 15 %. In a context of slightly declining consumption, the dumped imports not only did not decrease, as could have been anticipated, but actually rose, thereby taking sales volume and market share from the Community industry.

In addition, significant dumping and price undercutting was found in respect of all countries considered. In view of the price sensitivity of the market and its relative transparency, this undercutting caused the Community industry's sales to decrease. This decline, coupled with a decrease in sales prices, caused a drop in profitability. Finally, as a result of the unsatisfactory financial results, the Community industry had to suspend any investment projects during the investigation period.

(105) The evolution of the dumped imports also prevented the Community industry from fully recovering from the past injury suffered at the time preceding the imposition of anti-dumping measures on imports originating in Japan, the Republic of Korea and Taiwan.

2. Other factors

(106) The Commission examined whether the material injury suffered by the Community industry should not be attributed to factors other than the dumped imports originating in the countries concerned.

Other imports

(107) The market share of imports from third countries not concerned by these reviews increased by 5,7 % during the period considered. In particular, the imports originating in the United States of America and Thailand increased significantly over the period considered. Moreover, the prices of these imports were found to be, on average, lower than the prices of the Community industry. Therefore, it cannot be excluded that the imports originating in the United States of America and Thailand contributed to the injury sustained by the Community industry.

(108) One of the Japanese producers/exporters claimed that imports originating in Brazil were the main source for the injury suffered by the Community industry. In support of this claim, statistics based on CN code 8532 22 00 were provided, which indicated a strong increase of imports from Brazil into the Community over the period considered.

(109) However, as stated above, the CN code includes not only LAECs but many other types of capacitors. No evidence was given that the statistics provided related to LAECs only, nor was any evidence presented that such imports were made at dumped and injurious prices. Finally, the available information concerning total imports of LAECs into the Community appears to indicate that imports from Brazil, if any, would be likely to be below de minimis levels. The claim was therefore rejected.

Evolution of Community consumption

(110) One of the Japanese producers/exporters claimed that any injury suffered by the Community industry was due to a general downturn in the economic cycle of the LAEC market after 1995.

(111) Over the period considered, the Community consumption increased by 12 %. Despite this increase, the sales of the Community industry declined by 5 % and this industry lost market share (– 15 %). Between 1995 and the IP, the Community consumption declined by 4 %, while the sales of the Community industry decreased by a much greater proportion (– 25 %). At the same time, the cumulated dumped imports increased by 11 %, despite the decline in consumption, and, consequently, these imports gained market share (+ 15 %). Therefore, the injury suffered by the Community industry could not be solely attributed to the decline in consumption between 1995 and the IP.

Performance of the Community industry

(112) One Japanese producer/exporter argued that the injury suffered by the Community industry was not due to the dumped imports, but resulted from the relative inefficiency of the Community industry. In particular, the following comments were raised:

(113) It was argued that the producers/exporters were more cost-efficient and more productive than the Community industry and that this advantage in terms of costs of production enabled these producers/exporters to sell LAEC at lower prices.

However, without examining the issue as to whether the producers/exporters concerned actually enjoyed any kind of cost advantage, the following must be stressed. The increased imports made from the countries concerned by the present reviews at dumped prices, even with anti-dumping measures in force, prevented the Community industry from making full use of its production capacity and thereby caused it severe injury. In these circumstances, it is considered that, irrespective of any cost advantages, even if these were accepted, this dumping of the exporters caused injury to the Community industry.

(114) It was further claimed that the Community industry was less advanced in product innovation and miniaturisation than the producers/exporters in the countries concerned and that, as a result of this, the Community industry's product range was less attractive to customers.

The Commission compared the product ranges offered by the cooperating parties. This comparison showed that, during the investigation period, the Community industry's product range was largely comparable in extension and features to that of the exporting producers. This included any miniaturised types. The comparisons on a type by type basis which were made for the purposes of the price undercutting calculations clearly indicated a very large degree of overlap between the Community produced and the imported products. Finally, it was also found that, as is the usual practice in this industry, the Community industry was able to produce 'special' or 'custom' designs, according to specific needs of specific customers. Therefore, the investigation did not identify any major differences in product range between the Community industry and the producers/exporters concerned, such as to justify any difference in attractiveness to the final customers.

(115) Finally, it was claimed that the Community industry sold over-specified LAECs in terms of lifespan. This over-specification resulted in substantially higher selling prices than the exporting producers concerned.

The results of the investigation have shown that the Community industry manufactured LAEC in accordance with the specifications requested by their customers. Moreover, it was found that the catalogue lifespan specifications of the Community industry were not always based on the same criteria as those of the producers/exporters, since different ways existed to express the lifetime of LAECs (e.g. 'total load life', 'test life', 'endurance', etc.), depending on the measurement criteria used. In this respect, no evidence was provided that the alleged overspecification of the Community industry's products could not have resulted only from different criteria used to measure the lifespan. Therefore, the argument cannot be considered as being substantiated and the allegations of these exporters cannot be accepted.

Injury caused by the Community industry's increased capacity and investments

(116) It was noted that the Community industry increased capacity and invested at a time, after 1995, when the market entered a downturn. However, it was also established that the investments made after 1995, and the subsequent capacity increase, were essentially related to the development of new state-of-the-art 'radial' capacitors. These investments did not represent more than 1 % of turnover. Their financial impact (i.e. additional depreciation and additional interest charges) was almost insignificant, compared to other costs. In addition, a small profit was recorded on the sales of such new 'radial' products, which was, however, insufficient to compensate for the losses incurred on other LAECs. Also, the sales of these new 'radial' products between 1996 and the IP avoided a further, even stronger decline in the total sales of the Community industry.

Therefore, the investments made after 1995 and the subsequent increase in capacity cannot be held responsible for the strong decline in profitability which took place after that date, especially when considering the simultaneous decline in sales prices (– 8 %), due to the strong downwards pressure exerted by the dumped imports.

3. **Conclusion**

(117) Although it cannot be excluded that the imports from other third countries, in particular the United States of America and Thailand, and a slight reduction in Community consumption may have had an impact, the cumulated dumped imports originating in Japan, the Republic of Korea and Taiwan had, taken in isolation, caused a material injury to the Community industry.

(118) This conclusion is drawn in particular in view of the decline in sales and the loss in market share suffered by the Community industry, in a period of increasing demand on the Community market, which coincided with an increase in volume of the abovementioned dumped imports, at prices which significantly undercut the Community industry's prices. The unfair competition from LAECs originating in the above countries also caused a decline in the Community industry's output and, between 1995 and the IP, a relative decline in prices. The combination of these two factors resulted in a significant drop in profitability during this latter period.

G. LIKELY EFFECTS OF THE REMOVAL OF THE ANTI-DUMPING MEASURES

(119) The possible effects of the removal of the anti-dumping measures currently applicable to Japan, the Republic of Korea and Taiwan were examined. Pursuant to Articles 11(2) and (3) of the Basic Regulation, the following elements were given particular attention: the effectiveness of the existing measures and the likelihood of continuation or recurrence of dumping and injury.

1. Effectiveness of the existing measures

(120) As explained above, the measures currently applicable on Japan cover a narrower range of products than the review investigation. Consequently, the analysis of the impact of the existing anti-dumping measures applicable on the Japanese imports can only be performed for this narrower range of products.

On the basis of the available information, it was noted that the volume of imports originating in Japan subject to anti-dumping measures declined during the period considered by approximately 40 % and that import prices showed a steady increase over the period considered. As a result of these trends, the market share of these imports declined from approximately 18 % in 1993 to approximately 9 % in the investigation period.

Similarly, the examination of the evolution of the volume of imports originating in the Republic of Korea and Taiwan indicates a relative decline over the period considered, which resulted in a consequent reduction in their market share. Average import prices increased as well, although remaining at injurious levels.

(121) It can therefore be concluded that the measures in place where at least partially effective in restoring fair conditions of competition on the Community market.

(122) However, despite the anti-dumping measures in place, the Community industry continued to suffer material injury. This should be attributed to the increasing amount of dumped imports originating in Japan, not subject to anti-dumping measures and to changed circumstances as regards dumping for the Republic of Korea and Taiwan. Indeed, the dumping margin for the Republic of Korea increased since the original investigation, from 70,6 % to 76,2 %. The dumping margin for the sole Taiwanese producer/exporter which cooperated in both the original and the review investigation concerning Taiwan (Kaimei Electronic Corp.) increased as well, from 10,7 % to 13,8 %.

2. Likelihood of continuation or recurrence of injury

(123) Actual material injury, caused by the cumulated dumped imports originating in Japan, Taiwan and the Republic of Korea was established, despite the existing anti-dumping measures. This provided sufficient evidence of a strong likelihood of the continuation of injury should the anti-dumping measures applicable to Japan, the Republic of Korea and Taiwan lapse.

In addition, as regards Japan, available information indicated that the cooperating Japanese producers/exporters still had significant spare capacity to increase their production and their exports into the Community, should the existing measures lapse.

(124) The review investigation also pointed to the existence of strong ties between certain Japanese producers/exporters and certain producers/exporters located in countries not subject to anti-dumping measures, including the USA and Thailand. It was considered that, as a result of these relationships, the Japanese producers/exporters in question could pursue a global strategy, especially since they sometimes sold in the Community through the same sales channels as the US and Thai producers/exporters. The strong increase in imports originating in these two latter countries during the period considered, reinforced the likelihood of renewed increased imports originating in Japan, should measures lapse and hence the likelihood of the continuation of injurious dumping.

H. COMMUNITY INTEREST

1. Preliminary remarks

(125) In both the original investigations concerning Japan, the Republic of Korea and Taiwan the Council concluded that no compelling reasons existed not to impose measures. This conclusion was drawn, essentially, in view of the negligible share of LAECs in the total costs of the end users (less than 1 %).

The Commission examined whether there were any changed circumstances since the original investigation which could lead to a different conclusion concerning the Community interest. To this end, information was requested from all interested parties known, including parties in the upstream industries, the Community producers, importers/distributors and the users. It should be noted that no replies were received from the upstream industries.

2. Likely effects of the anti-dumping measures on users

(126) Two categories of users were identified

— The manufacturers of power supply devices. These power supplies are then incorporated in finished consumer electronics goods,

— The manufacturers of finished electronics goods.

(127) As regards the manufacturers of power supplies, according to the information available, this industry employs some 12 000 people and represents a total turnover of approximately EUR 1,5 billion. Submissions were received from a number of companies accounting for approximately 9 % of total industry's turnover and employment and whose consumption of LAEC in the IP accounted for approximately 5 % of the total Community consumption, according to available information. These companies argued that the existing anti-dumping duties resulted in a significant increase in purchase costs. In the longer run, this increase in costs could force a significant number of companies to relocate production outside the Community, with a consequent significant loss of employment.

However, the examination of the facts has shown that the cost of a LAEC represents approximately 4 % of the total cost of a power supply device. The measures proposed would result in a negligible increase in costs (less than 1 %). It was also found that the weighted average profitability of the companies which submitted information, expressed as a percentage of net sales, was more than 18 % in the IP. This profitability was attained despite the anti-dumping measures in force and even increased between 1993 and the IP.

(128) As regards the manufacturers of finished consumer electronics goods, the costs of LAECs represent even less than 4 % of total costs of production (generally around 1 %). The same conclusion can be drawn should the LAECs currently not covered by anti-dumping measures also become subject to such measures.

(129) Finally, no information was submitted to the Commission which would indicate that users (power supply manufacturers or finished electronic goods producers) had relocated production outside the Community as a result of the measures imposed on Japan, in the Republic of Korea and Taiwan. Any risks of relocation resulting from the continuation and/or the amendment of the anti-dumping measures should be considered as being unlikely.

3. **Likely effects on importers and distributors**

(130) On the basis of the available information, it was concluded that the continuation and/or the amendments of the anti-dumping measures would only have a minimal impact on the importers and distributors of LAECs in the Community, given that LAECs represented, on a weighted average basis, a relatively small proportion of their total activities, in terms of turnover and profit contribution.

4. **Conclusion on Community interest**

(131) On the basis of the above elements, no changed circumstances as regards Community interest were found which could lead to a different conclusion than the one reached in the original investigations on Japan, the Republic of Korea and Taiwan. It is therefore confirmed that no compelling reasons exist which would indicate that it is not in the Community interest to renew anti-dumping measures on imports of LAECs originating in Japan, the Republic of Korea and Taiwan.

I. **TERMINATION OF THE PROCEEDINGS**

(132) As mentioned above in recital (6), a further proceeding, concerning LAECs originating in the United States of America and Thailand was initiated in November 1997, pursuant to Article 5 of the Basic Regulation. The Commission's investigation definitively established the existence of significant dumping and material injury on the Community industry resulting therefrom. No compelling reasons were found indicating that new definitive measures would be against the Community interest. Consequently, the Commission proposed to the Council the imposition of definitive anti-dumping measures on the imports of LAECs originating in the United States of America and Thailand. However, the Council did not adopt the proposal within the time limits laid down in the Basic Regulation. As a result, definitive measures were not imposed on imports from the United States of America and Thailand and the provisional measures, which entered into force in August 1998, lapsed on 28 February 1999.

(133) The new investigation concerning the United States of America and Thailand and the two present reviews were conducted, to a large extent, simultaneously. As indicated above, basically the same conclusions in the present reviews have been reached as in the new proceeding concerning the United States of America and Thailand, for the same product concerned. These conclusions call in principle for amending the definitive measures on imports from Japan, the Republic of Korea and Taiwan.

However, Article 9(5) of the Basic Regulation provides that anti-dumping duties shall be imposed on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury.

(134) Therefore, it is concluded that, in the absence of measures on the United States of America and Thailand, the imposition of any measures on imports originating in Japan, the Republic of Korea and Taiwan as a result of the present investigation would be discriminatory towards these latter three countries.

(135) In consideration of the above, in order to ensure a coherent approach and to respect the principle of non-discrimination as set out in Article 9(5) of the Basic Regulation, it is necessary to terminate the proceedings concerning imports of LAECs originating in Japan, the Republic of Korea and Taiwan, without the imposition of anti-dumping measures.

(136) One Japanese exporting producer claimed that the proceeding concerning Japan should be retroactively terminated as from the date of initiation of the present review, i.e. 3 December 1997, on the grounds that, while the review on Japan was pending, imports originating in that country were still subject to measures and were therefore discriminated against compared to the imports originating in the United States of America and Thailand, for which no duties were collected.

(137) However, as noted above in recital (132) above, between December 1997 and 28 February 1999 imports originating in the United States of America and Thailand were subject to investigation, as were the imports originating in Japan. The fact that measures were in force against Japan but not against the United States of America and Thailand over that period of time is merely a reflection of the fact that the proceeding concerning the United States of America and Thailand was at a different stage, the investigation being the initial investigation, whereas as regards Japan, the measures in force were those imposed by Regulation (EEC) No 3482/92. In these circumstances, no discrimination occurred because the situation of each proceeding was different.

(138) Nevertheless, it is accepted that, from 28 February 1999 onwards, given the considerations set out in recitals (132) to (135) above, imports originating in Japan should be treated in the same way as those originating in the United States of America and Thailand. The same is true for the Republic of Korea and Taiwan. The investigation concerning the United States of America and Thailand had to be concluded by 28 February 1999, either by the imposition of measures or the termination of the proceeding. The present investigation has reached similar conclusions to the investigation concerning the United States of America and Thailand, and thus the same treatment must be applied to the present proceeding.

(139) Consequently, the proceedings concerning imports of LAECs originating in Japan, the Republic of Korea and Taiwan, should be terminated without the re-imposition of anti-dumping measures, with a retroactive effect as of 28 February 1999,

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping proceeding concerning imports of certain large aluminium electrolytic capacitors originating in Japan is hereby terminated.

Article 2

The anti-dumping proceeding concerning imports of certain large aluminium electrolytic capacitors originating in the Republic of Korea and Taiwan is hereby terminated.

Article 3

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

It shall apply from 28 February 1999.

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

Done at Brussels, 24 January 2000.

For the Council

The President

J. GAMA