COUNCIL REGULATION (EC) No 312/2002

of 18 February 2002

imposing a definitive anti-dumping duty on imports of certain magnetic disks (3,5″ microdisks) originating in Japan and the People's Republic of China and terminating the proceeding in respect of imports of 3,5″ microdisks originating in 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 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. Previous investigations involving Japan, Taiwan and the People's Republic of China

(1) By Regulation (EEC) No 2861/93 [2], the Council imposed definitive anti-dumping measures on imports into the Community of certain magnetic disks ('3,5″ microdisks') originating in Japan, Taiwan and the People's Republic of China.

2. Related investigations

(2) Definitive anti-dumping duties have also been imposed on imports of 3,5″ microdisks originating in Hong Kong and the Republic of Korea [3] and Indonesia [4].

The measures concerning Hong Kong and the Republic of Korea are subject to a review which was initiated in September 1999 [5].

(3) The measures concerning Malaysia, Mexico and the United States of America expired on 14 April 2001 [6].

3. Request for review

(4) Following the publication of the notice of impending expiry of the anti-dumping measures applicable to imports of 3,5″ microdisks originating in Japan, Taiwan and the People's Republic of China [7], the Commission received in July 1998, a request to review these measures pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (the 'basic Regulation').

The request was lodged by the Committee of European Diskette Manufacturers ('Diskma') on behalf of producers whose combined output constitutes a major proportion of the total Community production of the product concerned.

(5) The request was based on the grounds that the expiry of the measures would be likely to result in the continuation or recurrence of dumping and injury to the Community industry. Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated such a review [8] pursuant to Article 11(2) of the basic Regulation.

4. Investigation

(6) The Commission officially advised the five Community producers supporting the request, the exporting producers and the importers known to be concerned as well as the representatives of the exporting countries of the initiation of the investigation, and gave the parties concerned the opportunity to make their views known in writing and to request a hearing.

(7) The Commission sent questionnaires to the parties known to be concerned and received full replies from two Community producers, a Taiwanese exporting producer and a Chinese producer, its related exporter in Hong Kong and its related importer in the UK.

(8) The Commission also sent questionnaires to a large number of economic operators understood to be or to represent purchasers and importers of 3,5″ microdisks in the Community.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 262, 21.10.1993, p. 4. Regulation as last amended by Regulation (EC) No 2537/1999 (OJ L 307, 2.12.1999, p. 1).
[3] Regulation (EC) No 2199/94 (OJ L 236, 10.9.1994, p. 2). Regulation as last amended by Regulation (EC) No 2537/1999 (OJ L 307, 2.12.1999, p. 1).
[4] Regulation (EC) No 1821/98 (OJ L 236, 22.8.1998, p. 1). Regulation as last amended by Regulation (EC) No 2537/1999 (OJ L 307, 2.12.1999, p. 1).
[5] OJ C 256, 9.9.1999, p. 3.
[6] OJ C 111, 12.4.2001, p. 9.
[7] OJ C 123, 22.4.1998, p. 5.
[8] OJ C 322, 21.10.1998, p. 4.

(9) The Commission sought and verified all information deemed necessary for the purposes of determining whether there was a likelihood of a continuation or recurrence of dumping and injury and whether maintaining the measures would not be against the Community interest.

Verification visits were carried out at the premises of the following companies:

Exporting producers

(a) Exporting producer in Taiwan:

CIS Technology Inc., Taipei Hsien, Taiwan;

(b) Exporting producer in the People's Republic of China/Hong Kong:

Hanny Zhuhai Ltd, Kowloon, Hong Kong (related exporter of the producer Hanny Magnetics (Zhuhai) Ltd., Guangdong Province, People's Republic of China)

and its related importer Memtek Products Europe Ltd, Harmondsworth, UK.

Community producers

Computer Support Italcard s.r.l., Milan, Italy;

Sentinel N.V., Bodem, Belgium.

(10) The investigation of the likelihood of continuation and recurrence of dumping covered the period from 1 October 1997 to 30 September 1998 (the 'investigation period'). The examination of the situation of the Community 3,5″ microdisks market covered the period from 1994 up to the end of the investigation period (the 'analysis period').

(11) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the maintenance of the existing measures for Japan and the People's Republic of China and the termination of the proceeding in respect of Taiwan. The Commission received representations from two interested parties following these disclosures. The comments of these parties were considered and, where appropriate, the findings have been modified accordingly.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(12) The product under consideration (3,5″ microdisks) is used to record and store encoded digital computer information falling within CN code ex 8523 20 90, with the exception of 3,5″ microdisks based on optically continuous servo tracking technology or magnetic sector servo tracking technology with a storage capacity of 120 MB or more.

(13) The 3,5″ microdisks concerned were available in various types, depending on various factors, including, amongst others, their storage capacity, formatting, degree of certification (a measure used to test the performance of the microdisk) and on the way in which they were marketed, i.e. whether sold as branded products (usually sold in 10 pieces boxes) or in bulk. Despite the existence of various types of 3,5″ microdisks, there were no significant differences in their basic physical characteristics and technology. They all showed a high degree of interchangeability.

On this basis, the 3,5″ microdisks as defined above are to be considered as one product.

2. Like product

(14) The various types of 3,5″ microdisks, as defined above, which are manufactured and sold in the Community or manufactured in the countries concerned and exported to the Community use the same basic technology, are alike in their basic physical characteristics and technology and show a high degree of interchangeability. All these 3,5″ microdisks, therefore, have to be considered as a like product within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OF DUMPING

1. Preliminary remarks

(15) It should be noted that imports from the countries concerned during the investigation period represented only a fraction of the quantities which were exported during the original investigation period (1 April 1990 — 31 March 1991), i.e. about 10 % in the case of the People's Republic of China and Taiwan and less than 1 % in the case of Japan.

2. Japan

(16) Three of the five companies named in the request for a review stated that they were no longer producing or selling the product concerned to the Community. The remaining two companies did not reply to the Commission's questionnaire, and so it was impossible to establish on the basis of their individual data whether or not these companies were dumping. Therefore, and in order not to reward non-cooperation, findings concerning Japan were made on the basis of facts available in accordance with Article 18 of the basic Regulation, in this case the evidence provided by the applicant. It should be noted that the information contained in the review request was the best information available. Eurostat data could not be used for the purposes of calculating dumping because the product concerned covers

only a part of the CN code. In the review request, the dumping margin was established on the basis of a comparison of constructed normal values (cost of production plus a reasonable amount for selling, general and administrative expenses, and for profit) with constructed export prices (prices delivered to the first unrelated customers less allowances reflecting costs and profits of importers). On this basis, and without any deduction for anti-dumping duties, the margin of dumping was between 5 % and 10 %.

3. **Taiwan**

(17) It is to be noted that one company in Taiwan responded to the questionnaire. This company alone accounted for practically all the exports of the product concerned to the Community during the investigation period, which amounted to almost three million units. Key events which had taken place after the investigation period had to be taken into account. The fact is that, in the course of the investigation, the company ceased production of 3,5″ microdisks by closing its Storage Media Business Division. This event was considered to be manifest, undisputed, lasting, not open to manipulation and did not stem from deliberate action by interested parties. As the cooperating company which accounted for practically all the exports of 3,5″ microdisks to the Community during the investigation period has ceased manufacturing the product concerned, it was considered that any assessment of possible continuation of dumping during the investigation period was devoid of any purpose.

4. **People's Republic of China**

(a) *General*

(18) It is to be noted that one company in the People's Republic of China responded to the questionnaire. This company alone accounted for practically all the exports of the product concerned to the Community during the investigation period, which amounted to almost two million units.

(b) *Normal value*

(19) As in the original investigation, Taiwan was proposed as an appropriate market economy country for the purpose of establishing normal value for the People's Republic of China, in accordance with Article 2(7)(a) of the basic Regulation. Interested parties were invited to comment on this choice. The only cooperating producer from the People's Republic of China objected to the fact that an analogue country had to be selected at all, and argued that normal value should instead be calculated on the basis of its own cost of production in the People's Republic of China. It claimed that it met all the criteria referred to in Article 2(7)(c) of the basic Regulation. This claim could not be accepted on the grounds that, under reviews pursuant to Article 11(2) of the basic Regulation, measures must either be maintained or repealed, but not modified. Reference is also made to the findings concerning a likelihood of recurrence of dumping. The company was informed that it could claim market economy status in the context of an application for a review pursuant to Article 11(3) of the basic Regulation. However, the company declined to do so.

(20) As no alternative analogue country was proposed, the Commission decided to use Taiwan as the basis for establishing normal value for the People's Republic of China. In addition, Taiwan was considered to be an appropriate and not unreasonable market already at the time of the original investigation.

(21) For all the types of 3,5″ microdisk, except one, exported by the cooperating Chinese exporting producer, normal value was calculated by reference to representative domestic sales prices to independent customers.

For the one type of 3,5″ microdisk, however, for which no comparable domestic sales in the analogue country could be found, normal value had to be constructed in accordance with Article 2(3) of the basic Regulation. The constructed normal value was calculated on the basis of the cost of production of an equivalent type produced by the cooperating Taiwanese exporting producer, including a reasonable amount for selling, general and administrative expenses and for profit.

(c) *Export price*

(22) As exports were made to a related importer in the Community, export prices were constructed on the basis of the price at which the product concerned was first resold to an independent buyer in the Community, in accordance with Article 2(9) of the basic Regulation. Adjustments were made for costs incurred between importation and resale and for profits accruing, so as to establish a reliable export price. These adjustments included costs for transportation, insurance, handling and ancillary costs in the Community, and customs duties. The related importer's selling, general and administrative costs relating to the product concerned were also deducted, as well as a reasonable margin of profit. As it was found that the financing costs relating to the 3,5″ microdisks business were not reflected in the related importer's accounts, these costs were calculated as a percentage of the final selling price of the product concerned, and deducted accordingly. An additional adjustment was made to take account of the selling and marketing costs incurred by a subsidiary of the related importer involved in the sale of the product concerned in the Community.

(d) *Comparison*

(23) Normal values and export prices were compared for each product type. Due allowance in the form of adjustments was made, in accordance with Article 2(10) of the basic Regulation for differences in factors which were claimed and demonstrated to affect prices and price comparability. Allowances were granted for differences in physical characteristics, discounts, transport, insurance, handling and ancillary costs outside the Community, and packing. The adjustment for physical characteristics reflected the fact that certain types of 3,5″ microdisks sold by the Chinese exporting producer were formatted, whilst the similar types sold on the Taiwanese markets did not have this characteristic.

(e) *Dumping margin*

(24) It was found that there was a pattern of export prices which differed significantly among regions: in one Member State, sales to independent customers amounting to almost half of the total were made at prices consistently higher than sales to independent customers in all the other Member States. Since, in these circumstances, the use of the average-to-average method for the calculation of the dumping margin did not reflect the full degree of dumping, it was considered appropriate that weighted average normal values per type be compared to prices of all individual export transactions to the Community, in accordance with Article 2(11) of the basic Regulation.

(25) The comparison showed the existence of a margin of dumping of between 5 % and 10 %, the dumping margin being equal to the amount by which the normal value exceeded the export price, expressed as a percentage of the cif import price at the Community border, duty unpaid.

5. **Conclusion**

(26) The above findings show the existence of a continuation of dumping for imports of 3,5″ microdisks originating in Japan and the People's Republic of China, although the import volume on the basis of which this conclusion had been reached were small. In the case of Taiwan, dumping is no longer continuing.

D. **LIKELIHOOD OF RECURRENCE OF DUMPING**

1. **Imports from Japan and the People's Republic of China**

(27) Imports from Japan and the People's Republic of China during the period covered by the original investigation amounted to around 130 million units and collectively accounted for around 30 % of the apparent Community consumption. Imports originating in Japan accounted for approximately three-quarters of the total imports from these two countries.

(28) Imports from both countries fell sharply after the imposition of the measures in 1993, so that already in 1995 they amounted collectively to around 10 million units. In view of the conclusion on the continuation of dumping regarding imports originating in Japan and the People's Republic of China, it was considered appropriate also to examine the likelihood of recurrence of dumping, i.e. the likelihood of increased quantities of imports at dumped prices originating in these two countries.

2. **Unused production capacities in Japan and the People's Republic of China**

(29) Two of the three Japanese companies which came forward declared that they no longer manufactured the product concerned. The third Japanese company, which manufactured the product concerned but did not export it to the Community during the investigation period, claimed not to have unused production capacity. The two remaining companies mentioned in the application did not reply in any way to the questionnaire. It was therefore assumed that these two companies may have unused production capacity to exploit.

(30) For the sole cooperating Chinese exporting producer, production decreased by almost 50 % between 1995 and the investigation period. However, evidence shows that substantial unused production capacity exists.

3. **Prices to other third country markets of Japan and the People's Republic of China**

(31) During the investigation period, sales of the sole cooperating Chinese exporting producer to non-EU countries were made at average prices substantially lower than those to the Community market. No information in this respect was provided by any Japanese exporting producer.

4. **Likely effect of the expiry of the measures for Japan and the People's Republic of China**

(32) As shown above, the dumping calculations made are based on relatively low export volumes to the Community. It is reasonable to assume that the expiry of the measures will lead to lower prices for Japanese and Chinese microdisks when delivered to final customers with the result that volumes are likely to increase.

(33) Cooperation from Japan was low in both the original investigation and the current expiry review. As mentioned at recital 16, two companies contacted did not reply to the questionnaire at all, though they are still active in the 3,5″ microdisk market. In these circumstances, it was concluded, on the basis of Article 18 of the basic Regulation, that unused production capacity is likely to exist, which could be exploited in the event of the anti-dumping measures being allowed to expire. On this basis, substantial exports at dumped prices are likely.

(34) Since the People's Republic of China has substantial unused production capacity and average export prices to non-EU countries were, during the investigation period, substantially lower than those to the Community market, it could be expected that, should the measures be repealed, a substantial proportion of sales currently made on the domestic market or exported to non-EU countries would be redirected towards the Community market at dumped prices.

5. **Likely effect of the expiry of the measures for Taiwan**

(35) As the only company which accounted for practically all the exports of the product concerned to the Community during the investigation has ceased manufacturing 3,5″ microdisks, no likelihood of a recurrence of dumping from this company exists.

(36) The Community industry claimed that two other Taiwanese producers of microdisks are still active in the business and that these two companies, which had not cooperated in the investigation, would export large quantities of 3,5″ microdisks at dumped prices, should measures be repealed in respect of Taiwan.

(37) The claim was rejected because no evidence was ever found that these two non-cooperating companies might have exported 3,5″ microdisks to the Community during the investigation period or in other recent periods. As during recent periods, exports to the Community can be considered as having been made exclusively by the Taiwanese cooperating producer which has ceased production, the dumping activities concerning 3,5″ microdisks can also be considered as having ceased. Moreover, the largest of the two companies referred to by the Community industry has set up in the Community a wholly owned subsidiary producing 3,5″ microdisks, and it has therefore little or even no reason at all to resume its exports of the product concerned to the Community.

6. **Conclusions**

(38) The investigation showed that exports from Japan and the People's Republic of China are still made at dumped prices. There is no indication as to why this should change if measures were to be repealed. Moreover, the volume of dumped imports, which is currently at negligible levels, was found likely to increase significantly should measures expire because the possible repeal of the measures and the substantial unused capacities are likely to result in lower resale prices, increasing sales volumes and market shares. It was therefore concluded that should the measures be repealed, imports originating in Japan and the People's Republic of China would continue to be made at dumped prices and there is also a likelihood that the volume of dumped imports would increase to significant quantities.

(39) As far as Taiwan is concerned, in the absence of dumped exports, the mere existence of two other producers of the product concerned is judged as not sufficient to imply that these two Taiwanese producers are likely to start exporting to the Community at dumped prices. It was therefore concluded that no serious risk of recurrence of dumping from Taiwan exists at present.

E. **DEFINITION OF THE COMMUNITY INDUSTRY**

(40) In the Community, 3,5″ microdisks are manufactured by:

— two Community producers, which fully cooperated with the Commission during the investigation,

— three other producers which were supporting the application,

— other economic operators related to Japanese, Taiwanese and Chinese exporters.

(41) As in the previous proceedings, it was found that the assessment of the situation of the Community industry would be distorted if Community producers related to those producers from countries involved in prior proceedings found to be dumping the product concerned, and causing material injury to the applicant, were not excluded from the definition of the 'Community production'. Consequently, the production of the economic operators which are related to producers in the countries concerned have been excluded from the definition of the 'Community production'.

(42) The production of the two cooperating Community producers and of the three other producers supporting the complaint constitute therefore the Community production within the meaning of Article 4(1) of the basic Regulation.

(43) During the course of the proceeding a submission was received from the Chinese exporting producer which alleged that the products manufactured by the two cooperating Community producers did not satisfy the provisions of the Community's own origin rules as laid down in Article 24 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community's customs code [1] and as further elaborated by the provisions of Regulation (EC) No 12/97 [2] and therefore could not be included in the Community production.

(44) This claim was rejected because the investigation revealed that the 3,5″ microdisks manufactured by these two Community companies are produced mainly from components sourced in the Community. In addition, they add substantial value in the manufacturing process, their headquarters and centres for research and development are all located in the Community and the 3,5″ microdisks that they produce have a Community origin in accordance with the Community's customs code.

(45) On the basis of the above, and given that the cooperating Community producers represent a major proportion, in this case more than 75 %, of the Community production, they are therefore considered to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation. They are hereinafter referred to as the 'Community industry'.

F. THE COMMUNITY 3,5″ MICRODISKS MARKET

1. General

(46) The market for 3,5″ microdisks is mature, and is currently characterised by a situation of falling demand. Other products such as Zip™ discs, other high capacity microdisks such as HiFDs and optical-magnetic data storage media, such as CD-Rs are progressively replacing the market held by 3,5″ microdisks. However, given the significant base of PCs with 3,5″ microdisk disk drives incorporated, it is clear that there will be a continuing need for these microdisks in the Community. Furthermore, according to recent market studies, most PC manufacturers continue to incorporate 3,5″ microdisk drives in the basic configuration of their machines. It is estimated that by the year 2002 there will be 38 million microdisk drives in the Community. The Community microdisk market will therefore remain important.

2. Consumption of 3,5″ microdisks on the Community market

(47) Figures for consumption in the Community are based on information contained in the application, verified production and sales figures provided by the Community industry and import volumes obtained via Eurostat. These estimates allowed a reasonable assessment of the Community consumption of the product concerned.

On this basis, total consumption in the Community fell throughout the period analysed from 1 400 million units (1994) to 1 300 million units (1995), 1 100 million units (1996), 1 000 million units (1997), before falling again to 900 million units in the investigation period, which represents a fall of 36 % over the whole period analysed.

3. Imports from the countries concerned

(a) *General remark*

(48) As regards Taiwan, in view of the conclusion that there is no likelihood of a continuation or recurrence of dumping in the future, the examination of a likelihood of continuation or recurrence of injury, relating to imports originating from this country was not pursued.

(b) *Volume and market share and prices of imports from Japan and the People's Republic of China*

(49) Due to the lack of cooperation, Eurostat information was used to estimate imported volumes. As mentioned above, the product concerned is only part of a CN heading and an estimate had to be made based on detailed custom information.

(50) The volume of imports from Japan and the People's Republic of China fell throughout the analysis period from 11 million units in 1995 to 2,6 million units in the investigation period. The total market share of both these imports fell from 0,8 % in 1995 to 0,3 % in the investigation period.

[1] OJ L 302, 19.10.1992, p. 1.
[2] OJ L 9, 13.1.1997, p. 1.

Imports into the Community (millions of units)	1995	1996	1997	Investigation period
Imports from Japan	4,86	1,695	1,390	0,655
Market share Japan	0,37 %	0,15 %	0,14 %	0,07 %
Imports from the People's Republic of China	6,090	2,065	5,835	1,915
Markets share People's Republic of China	0,47 %	0,19 %	0,58 %	0,22 %
Total imports from Japan, and the People's Republic of China	10,95	3,76	7,225	2,570
Index 1995 = 100	100	34	66	23
Total market share of Japan and the People's Republic of China	0,84 %	0,34 %	0,72 %	0,29 %

(c) *Imports declared as having originated in Macao*

(51) It should be noted that 200 million units were imported into the Community as having originated in Macao in 1995. However, this trade stopped during 1996 following an investigation by the anti-fraud services of the Commission in which it was proven that these microdisks were either of Chinese or Taiwanese origin. Anti-dumping duties were therefore collected retroactively on these imports ([1]).

4. **Price behaviour of the exporting producers**

(52) The development of prices of the imports of 3,5″ microdisks from the People's Republic of China is shown in the following table.

(ECU per unit)

Average price of imports	1995	1996	1997	Investigation period
Imports from the People's Republic of China	0,330	0,135	0,119	0,146

Source: Eurostat.

(53) The comparison of the prices of the dumped imports originating in the People's Republic of China was established by comparing their cif sales prices established as described at recital 23, with the weighted average ex-factory prices of the Community industry. The comparison was made for the same product types imported (i.e. high-density, double-density, bulk or packed, degree of certification, formatted or unformatted). The comparison showed, on a weighted average basis, that the prices of the imports originating in the People's Republic of China were more than 20 % lower than those of the sales of the Community industry during the investigation period.

(54) For Japan, as no exporting producer from Japan cooperated in the present investigation, the only available prices are the Eurostat prices or price quotations provided in the review request. The level of prices derived from Eurostat appears very high in comparison to imports from the People's Republic of China (0,718 ECU/unit). However, it should be recalled that the Eurostat price data is for a group of product which also covered more expensive high storage microdisks that were excluded from the scope of the measures following a review concluded in 1999. Therefore no meaningful price comparison was possible from this source. With regard to price quotations, they showed prices for Japanese products similar to those of the Community industry.

([1]) See recital 15 of Commission Regulation (EC) No 1445/96 of 24 July 1996 (OJ L 186, 25.7.1996, p. 14) and recital 3 of Commission Decision No 98/175/EC of 3 March 1998 (OJ L 63, 4.3.1998, p. 32).

5. **Situation of the Community industry**

(a) *Production, capacity and capacity utilisation*

(55) The production, production capacity and capacity utilisation of the Community industry were as follows:

	1994	1995	1996	1997	Investigation period
Production in millions of units	185	218	201	182	174
Index 1995 = 100	100	118	109	98	94
Capacity in millions of units	201	223	261	222	222
Index 1995 = 100	100	111	130	110	110
Capacity utilisation	92 %	98 %	77 %	82 %	79 %

(b) *Sales, market shares and prices*

(56) Sales on the Community market to unrelated customers, market share and prices of the Community industry were as follows:

	1994	1995	1996	1997	Investigation period
Sales in millions of units	175	211	200	178	168
Index 1995 = 100	100	121	114	102	96
Market share	12,5 %	16,2 %	18,2 %	17,8 %	18,7 %
Average price per unit (ECU)	0,3217	0,2503	0,2056	0,1799	0,1511
Index 1995 = 100	100	78	64	56	47

(57) The Community industry's market share rose by 3,7 percentage points between 1994 and 1995 and by a further 2 percentage points between 1995 and 1996. It remained within a relatively narrow range thereafter. Prices fell by 53 % between 1994 and the investigation period.

(c) *Inventories*

(58) Inventories are relatively stable over time and therefore they do not add any relevant information as to the situation of the Community industry.

(d) *Profitability, return on investments and cash flow*

(59) It was found that throughout the analysis period, the Community industry had recorded financial results (i.e. losses) which were well below the profit rate deemed appropriate for the Community industry in the original investigation. Profit levels for 1995 are not available due to industry restructuring. Overall during the analysis period, losses fell from − 3,36 % in 1994 to − 0,17 % in the investigation period.

(60) Return on investments has been negative during the analysis period and, in general terms, in line with the trend of profitability. Cash flow has slightly improved in line with profitability.

(e) *Employment, wages and labour productivity*

(61) Employment in the Community industry fell steadily throughout the period analysed from 266 in 1994 to 132 in the investigation period, 50 % of its labour force, as the Community industry tried to reduce costs and increase productivity. Wages decreased by 35 %.

(62) The above employment levels were falling at a time when the Community industry was increasing its output. This implies that labour productivity was increasing, from 695 000 units per employee to 1 318 000 units per employee, an increase of 89 % throughout the period analysed.

(f) *Investments and ability to raise capital*

(63) Production of 3,5″ microdisks is capital intensive and production facilities typically operate 24 hours daily all year round. Although there were investments of ECU 2,9 millions in 1994, ECU 0,6 millions in 1995 and ECU 0,3 millions in 1996, there have been no significant net investments in this industry for the last two years of the analysis period.

(64) The losses experienced during the analysis period were such that no financing for new investment by the Community industry was possible during the last two years.

(g) *Exports by the Community industry*

(65) The exports remained stable between 2 and 3 % of total turnover over the analysis period.

(h) *Magnitude of dumping margin and recovery from past dumping*

(66) As concerns the impact on the situation of the Community industry of the magnitude of the actual margin of dumping found during the investigation period, it should be noted that the margins found for Japan and the People's Republic of China are not negligible. The situation of the Community industry improved to a certain extent after the imposition of measures, but it has not completely recovered. Therefore, should measures be repealed, the impact of the dumping margin found in the current investigation would be significant.

6. **Submissions received from interested parties in the People's Republic of China**

(67) One cooperating exporting producer in the People's Republic of China claimed that the 3,5″ microdisk market can be divided into two market segments, namely 'branded' and 'bulk'. The bulk part of the market is characterised by large-scale deliveries of 3,5″ microdisks where there is no emphasis on high quality. Branded products, on the other hand, are those which normally correspond to high quality standards. It was argued that these market segments are distinct from each other, and that they should therefore receive separate treatment in the analysis.

To illustrate its point, the company claimed that sales of high quality branded product were stable while sales of low quality bulk product had been falling. It further alleged that the Community producers' sales were mainly in the area of low quality bulk products and that this would explain any material injury they might be suffering. According to the submission, this company concentrated on sales of branded products, and therefore allegedly did not compete with the Community industry.

(68) The argument that branded and bulk segments should be examined separately cannot be accepted. As has already been pointed out, 3,5″ microdisks are the same product irrespective of whether they are sold under a brand name or not, and are, on a type by type basis, alike in all respects and interchangeable. There is a significant overlap between the type of 3,5″ microdisks sold by Chinese producers and those sold by the Community producers; they are competing therefore in the same market segment.

(69) Another interested producer in the People's Republic of China, which did not cooperate in the investigation, claimed that the Community industry's injury was not due to the imports from the People's Republic of China, but rather was a result of 3,5″ microdisks being a mature product which would disappear within the next two years. In addition, it was stated that the Chinese product was a low quality bulk product which did not compete with the Community production which, according to this interested party, was at the high quality branded level.

(70) The claims by this party could not be verified in view of the lack of cooperation. In any event, although 3,5″ microdisks are indeed a mature product, the decline in consumption will take place over a considerably longer period than two years. As was shown above, demand for 3,5″ microdisks is expected to continue, albeit with declining sales, and personal computer manufacturers will continue to install microdisk drive-units as standard equipment in their machines. The claim that the Chinese product does not compete with Community production has already been rejected.

7. **Conclusions on the situation of the Community industry**

(71) The overall picture that emerges of the situation of the Community industry from the foregoing is that of an industry still in a weak situation, despite an improved market share and a successful effort at reducing significantly costs of production (which fell 51 % over the period examined). Production methods have been modernised and facilities are now almost entirely automated in order to improve efficiency, maintain market share and maximise profits. However, the Community industry has not been able yet to reach a satisfactory financial situation.

G. **LIKELIHOOD OF RECURRENCE OR CONTINUATION OF INJURY**

(72) It is recalled that it was concluded at section D that it is likely that, both for Japan and the People's Republic of China, dumping will continue should the anti-dumping measures expire. It was also concluded that there will be a likelihood of recurrence of dumping, should measures expire, since volumes of dumped imports would considerably increase.

(73) It was shown at section F that the Community industry was in a vulnerable situation during the investigation period.

(74) Should measures expire, dumped imports from Japan and the People's Republic of China are likely to push down the prices of the Community industry which are already depressed.

(75) In such conditions, the Community industry, already loss-making, would not be able to compete with high quantities sold at such low prices because firstly, a difference in prices in this market (microdisks are a commodity-like product) leads to immediate substitution in supplies and secondly, the Community industry has already made all the necessary efforts to restructure itself and is already operating at very low costs. It is therefore likely that the Community industry would see a further deterioration of its financial situation bringing its very survival into question.

Claim by a Chinese exporting producer

(76) A Chinese exporting producer argued that market circumstances were not likely to lead to renewed injurious dumping from the People's Republic of China. The investments required to upgrade existing Chinese production facilities to produce high quality 3,5″ microdisks would not be worthwhile given current market trends, and no stockpiles of product existed as claimed by the applicant parties. It submitted therefore that no significant increase in imports from the People's Republic of China was likely in the event that anti-dumping duties expired.

From the outset it should be noted that the allegations made by the company concerned could not be verified, as this company did not cooperate in the investigation. For the sake of completeness, the arguments brought forward have been analysed nevertheless. As regards the upgrading argument, this question is considered to be irrelevant for the question of recurrence of injury as it has been determined that all types of 3,5″ microdisks, including those for which there currently is production in the People's Republic of China, are products alike to those produced by the Community industry and that consequently these products are in competition with each other.

Conclusion

(77) In light of the above findings, it is concluded that the expiry of the measures would be likely to lead to a continuation and/or recurrence of injury for the Community industry.

H. **COMMUNITY INTEREST**

1. **General considerations**

(78) The Commission examined whether the maintenance of the anti-dumping measures on 3,5″ microdisks would be in the interest of the Community. It has been found that there is a likelihood of continuation and/or recurrence of injurious dumping. The investigation also considered whether or not there are any overriding interests against maintaining the measures and also took account of the past effects of duties on all the various interests involved.

(79) It should be recalled that, in the previous investigation, the adoption of measures was considered not to be against the interest of the Community. It should also be noted that, since this is an expiry review investigation, this investigation should also show the impact of the existing measures in particular on users consumers and traders.

2. **Interests of the Community industry**

(80) In view of the conclusions on the situation of the Community industry set out at section F, especially in terms of its negative profitability, the Commission considers that, in the absence of measures against injurious dumping, the Community industry is likely to experience a worsening of its financial situation.

(81) The Community industry is viable and capable of supplying the market for a product which, although at a mature stage of its life cycle, constitutes the basic storage device for a large number of computer users. Indeed, the Community industry has shown a willingness to maintain a competitive presence on the Community market. Examples of such steps taken are:

(a) keeping prices at a minimum to maintain its market share;

(b) progression towards greater consolidation;

(c) closure of manufacturing units;

(d) widespread use of modern production techniques (e.g. increased mechanisation and computerisation);

(e) improvements in productivity;

(f) investing in production of other digital storage media products.

(82) It is also to be noted that the production of data storage media is an area of technological importance for the Community as a whole. The production technology and experience gained by the Community industry in 3,5″ microdisk production has provided, and will continue to provide, a basis for further innovation in the manufacture of other related data storage media products. For the Community industry, remaining viable in the microdisk sector is the economic basis for participating in the growing market of other storage media.

3. **Interests of unrelated importers/traders**

(83) Only one unrelated importer cooperated with the investigation. It stated that imports were restricted by the existence of anti-dumping duties. However, it was obvious that imports were still possible for this importer. Should measures be maintained, this company would still be able to source 3,5″ microdisks from the countries concerned and from other third countries, including countries not subject to anti-dumping measures.

(84) Furthermore the limited cooperation of importer in this case leads to the conclusion that the measures in force on imports originating in Japan and the People's Republic of China did not have any significant impact on the situation of unrelated importers and traders of 3,5″ microdisks in the Community.

(85) Therefore, it is concluded that the continuation of the measures is not likely to affect the situation of unrelated importers and traders of 3,5″ microdisks in the Community.

4. **Interests of component suppliers**

(86) Any further shrinking and/or deterioration of the Community industry would not only have negative implications for employment and investment in the industry itself but may have a knock-on effect among the industry's suppliers of *inter alia*, shells, cookies, shutters, hubs, liners and springs.

(87) The Community producers source the large majority of their materials and components from suppliers located in the Community. Therefore the continuation of the anti-dumping measures would clearly be in the interest of the Community component supplier industry.

5. **Interests of users and consumers**

(88) Major users of 3,5″ microdisks include duplicators and final consumers. Neither sector has made representations in this review investigation. The Commission, therefore, considers that the findings of the original investigation in this context are still applicable, i.e. the increase in costs applicable to this sector when compared to overall costs can be considered as negligible and would have very little or no impact on prices to retail consumers.

(89) On the contrary the expiry of the measures would seriously threaten the viability of the Community industry, the disappearance of which would reduce supply and competition, to the detriment of duplicators and consumers.

6. **Conclusion**

(90) After weighing the interests of the various parties involved, the Commission concludes that there are no compelling reasons of Community interest against the continuation of measures.

I. **PROPOSED DUTIES FOR JAPAN AND THE PEOPLE'S REPUBLIC OF CHINA**

(91) In view of the findings above, it is considered appropriate that the anti-dumping duties imposed by Regulation (EEC) No 2861/93 should be maintained at existing levels, i.e.:

Japan	Memorex Telex Japan Ltd	6,1 %
	Hitachi Maxell Ltd	20,6 %
	TDK	26,7 %
	All other companies	40,9 %
People's Republic of China	Hanny Magnetics	35,6 %
	All other companies	39,4 %.

(92) Because of the long duration of the investigation, it is considered appropriate that the measures be limited to four years.

J. **TERMINATION OF THE PROCEEDING IN RESPECT OF TAIWAN**

(93) In view of the findings set out above concerning imports originating in Taiwan, the anti-dumping measures currently in force against Taiwan are no longer warranted and the proceeding should be terminated with regards to imports originating in this country. Notwithstanding the duration of the investigation the termination should be effective from the date of entry into force of this Regulation. In fact, the termination is motivated by post investigation period events assessed several months after, and to grant retroactivity in these circumstances would be inconsistent with the sequence of events during the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of 3,5″ microdisks used to record and store encoded digital computer information falling within CN code ex 8523 20 90 (TARIC code 8523 20 90*40) and originating in Japan and the People's Republic of China, with the exception of 3,5″ microdisks based on optically continuous servo tracking technology or magnetic sector servo tracking technology with a storage capacity of 120 MB or more.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the following manufacturers shall be as follows:

Country	Company	Rate of AD duty %	TARIC additional code
Japan	Memorex Telex Japan Ltd	6,1 %	8705
	Hitachi Maxell Ltd	20,6 %	8706
	TDK	26,7 %	8707
	All other exporting producers	40,9 %	8999
The People's Republic of China	Hanny Magnetics	35,6 %	8711
	All other exporting producers	39,4 %	8999

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

Article 2

The anti-dumping duties shall be imposed for a period of four years from the date of entry into force of this Regulation.

Article 3

The proceeding concerning imports of 3,5″ microdisks originating in Taiwan is hereby terminated.

Article 4

This Regulation shall enter into force on the day following that of 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, 18 February 2002.

For the Council
The President
J. PIQUÉ I CAMPS