

COMMISSION REGULATION (EEC) No 2640/86

of 21 August 1986

imposing a provisional anti-dumping duty on imports of plain paper photocopiers originating in Japan

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Article 11 thereof,

After consultations within the Advisory Committee as provided for by the above Regulation,

Whereas :

A. Procedure

- (1) In July 1985 the Commission received a complaint lodged by the Committee of European Copier Manufacturers (CECOM) on behalf of producers whose collective output constitutes a major proportion of Community production of the product in question. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of plain paper photocopiers (PPCs), falling within Common Customs Tariff subheading 90.10 A, corresponding to NIMEXE code 90.10-22 and originating in Japan, and commenced an investigation.
- (2) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

All the known Japanese exporters, some importers and all known Community producers made their views known in writing. Hearings were requested

by all those exporters and importers who made themselves known to the Commission.

Submissions were also made by a number of organizations representing Community purchasers of the product.

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

(a) *EEC producers* :

Develop, Dr Eisbein GmbH, Germany,
Océ Nederland BV, Netherlands,
Ing. C. Olivetti & C. SpA, Italy,
Rank Xerox Ltd, United Kingdom and the Netherlands,
Tetras SA, France ;

(b) *Japanese exporters* :

Canon Inc., Tokyo,
Copyer Co. Ltd, Tokyo,
Fuji Xerox Co. Ltd, Tokyo,
Konishiroku Photo Industry Co., Tokyo,
Kyocera Corporation, Tokyo,
Matsushita Electric Industrial, Osaka,
Minolta Camera Co. Ltd, Osaka,
Mita Industrial Co. Ltd, Osaka,
Ricoh Company Ltd, Tokyo,
Sanyo Electric Co. Ltd, Osaka,
Sharp Corporation, Osaka,
Toshiba Corporation, Tokyo ;

(c) *Importers in the Community* :

Canon (France) SA, France,
Canon Copylux GmbH, Germany,
Canon (UK) Ltd, United Kingdom,
Minolta (France) SA, France,
Minolta Germany GmbH, Germany,
Minolta (UK) Ltd, United Kingdom,
Mita Copystar Ltd, United Kingdom,
Mita Italia SpA, Italy,
Panasonic Deutschland GmbH, Germany,
Ricoh Deutschland GmbH, Germany,

⁽¹⁾ OJ No L 201, 30. 7. 1984, p. 1.

⁽²⁾ OJ No C 194, 2. 8. 1985, p. 5.

Ricoh Netherlands BV, Netherlands,
 Ricoh UK Ltd, United Kingdom,
 Sanyo Büro Electronic Europa Vertriebs GmbH,
 Germany,
 Sharp Electronics Europe GmbH, Germany,
 Sharp UK Ltd, United Kingdom,
 Toshiba Europa GmbH, Germany,
 U-Bix (France) SA, France,
 U-Bix International GmbH, Germany,
 U-Bix (UK) Ltd, United Kingdom,
 Yashica Kyocera GmbH, Germany,
 Agfa-Gevaert NV, Belgium,
 Fratelli Milani Srl, Italy,
 Gestetner Holdings Ltd, United Kingdom,
 Kalle GmbH, Germany,
 Lion Office Ltd, United Kingdom,
 Nashua (UK) Ltd, United Kingdom,
 Nashua GmbH, Germany,
 Regma Systèmes SA, France.

- (4) The Commission requested and received detailed written submissions from the complainant Community producers, the exporters and a number of importers, and verified the information therein to the extent considered necessary.
- (5) The investigation of dumping covered the period from January to July 1985, inclusive.

B. Normal value

- (6) For each of the exporters' models sold in significant quantities in the ordinary course of trade on the domestic market normal value was provisionally determined on the basis of the weighted average domestic prices of these models.
- (7) Despite certain exporters' claims to the contrary, the Commission considered that it would be inappropriate to take account of any transfer price between related companies or branches of any exporter when establishing normal value by means of domestic prices, these prices not being those paid or payable in the ordinary course of trade for the like product. Accordingly, only prices to independent purchasers were used for the determination of normal value.

Some exporters objected to this, indicating that certain transfer prices were at approximately the same level as those to certain independent purchasers and could accordingly be included as provided

for by Article 2 (7) of Regulation (EEC) No 2176/84. The Commission considers, however, that where a sales organization, such as many of those of the exporters concerned, merely forms part of a corporate entity created for the manufacture and sale of specific products Article 2 (7) does not apply to the transfer of these products from one part of the corporate entity to another, e.g. from manufacturing to sales. In any event, even if Article 2 (7) were to apply to such transfers, the Commission considers that such sales were not made in the ordinary course of trade and that the prices and costs involved were not necessarily comparable to transactions between unrelated companies. In addition, in every instance, sales to independent purchasers amounted to at least 70 % of all transactions and were accordingly considered representative of all sales on the domestic market.

- (8) Where models comparable to those sold for export to the Community were sold in substantial quantities over the reference period on the domestic market at prices which did not permit recovery of all costs, the normal value was determined on the basis of the remaining sales on the domestic market. In cases where the volume of such sales was less than the threshold established by the Commission in previous cases, of 5 % of the volume of exports of these models to the Community, the Commission determined normal value on the basis of constructed value.
- (9) The constructed values were computed by taking all costs, both fixed and variable, in the country of origin of materials and manufacture plus selling, administrative and other general expenses and a reasonable margin for profit. In cases where domestic sales were made through a subsidiary sales company or companies, an allocation, generally on the basis of turnover, was made to include in the constructed value the selling, administrative and other general expenses of these sales companies. On other occasions, allocations were made on the basis of available accounting data and the method proposed by the company itself. In such cases, it was demonstrated to the Commission that the method used was reasonable and did not depart significantly in result from an allocation based on turnover.
- (10) As regards profit, the facts available to the Commission have led it to believe that manufactures of PPCs do not consider the profitability of PPCs themselves, i.e. the machines, in isolation from that of the remaining PPC products. The sale

of a PPC generates considerable income in the sale of consumables, e.g. toner and paper, particularly in Japan where a purchaser appears in practice to be restricted in its source of supply of these items to the manufacturer of the machine. The result of this has been that machines are often sold at a loss or with minimal profit, the return being made on the consequent sale of consumables. Accordingly, where the information was available in relevant form and to the extent considered appropriate, taking account of the circumstances of the individual companies, the Commission used the profit figure for each exporter's total PPC business for determining a constructed normal value.

- (11) Several exporters claimed that selling, general and administrative expenses incurred by their sales organizations in Japan should not be included in the calculation of normal value, whether based on constructed value or on domestic prices. These exporters put forward the view that such expenses were directly related to the domestic sales under consideration and should accordingly be allowable under Article 2 (10) (c) of Regulation (EEC) No 2176/84, thus assimilating the determination of normal value with the determination of the export prices to exporters' related sales organizations in the Community, where costs are deducted in order to construct export prices.

- (12) The Commission considers, however, that such expenses should in these cases be included in the determination of normal value.

In the first place, it was established that all the sales organizations concerned form an integral part of the exporters' corporate structure and have, for the most part, only functions which are those of a sales branch or department. In cases where such sales organizations had functions other than domestic sales (e.g. import and resale), the Commission was satisfied that the costs relating to these other functions did not increase the allocation of costs to the sale of PPCs, the allocation normally being made on the basis of the total turnover of the sales organization.

Secondly, a normal value based on domestic price is to be, according to Article 2 (3) of Regulation (EEC) No 2176/84, the price actually paid in the ordinary course of trade for the like product in the exporting country. Such a price will include sales,

general and administrative costs which, in the case of the exporters in question, are the sales, general and administrative costs of their domestic sales organizations. Accordingly, in the view of the Commission, the costs of these sales organizations should be included in normal value.

Thirdly, where normal value is based on constructed value, Article 2 (3) (b) (ii) of Regulation (EEC) No 2176/84 provides that a reasonable amount for selling, administrative and other general expenses (and profit) should be added to the costs of production. This is intended to lead to a normal-value determination as if sales on the domestic market have taken place. For such domestic sales to be considered in the ordinary course of trade in the market under consideration their prices should reflect an amount equal to that incurred by the seller for sales, administrative and general expenses. Since sales in the ordinary course of trade of PPCs in Japan are made for the most part through wholly-owned or controlled sales companies, and since these organizations have the function of a sales department of the producing company, the selling, administrative and general expenses incurred by the relevant sales company of such exporters are costs which must be taken into consideration for the determination of the individual exporter's constructed normal value.

- (13) A number of exporters claimed allowance for a trade-in payment made when a purchaser of a new machine 'traded-in' his old machine. The methods of making this payment varied from company to company but it was generally only made on the producer being satisfied that the old machine had been removed from the market-place. This was done by the producer or its dealer receiving the machine, its reprographic unit or the plate containing the machine's serial number, thus rendering it unserviceable under Japanese sale of goods legislation.

- (14) The Commission considers that no adjustment is warranted to the normal value for this trade-in expense. Any loss on the resale or, almost always, the scrapping of the traded-in machines is considered not to be a selling expense, directly and exclusively linked to the sale under consideration. The amount concerned cannot be considered as a discount and is merely a measure of the value to the exporter concerned of the used machine.

The exporters concerned objected to this approach, claiming that the trade-in payment was effectively a discount to meet competition. The Commission, however, was satisfied that the payment was only made to the end user when a machine was traded-in and was thus not a discount or rebate solely linked to the sale under consideration but was a payment for the value to the manufacturer of the removal of a machine from the market-place. The amount was, accordingly, a general expense which was incurred by the manufacturer concerned and which fell into the same category as any other such expense as referred to in Article 2(10)(c) of Regulation (EEC) No 2176/84.

- (15) The same considerations applied in cases where an exporter claimed an allowance for a payment representing the purchase of the outstanding obligations under a lease contract.

C. Export price

- (16) With regard to exports by Japanese producers directly to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the product sold. However, a number of sales to independent importers were made by exporters' subsidiary companies in the Community. In some such cases, it was clear that although the related company was not the importer on record it performed the functions and bore the costs of an importer. It took orders, purchased the product from the exporter and resold, to, *inter alia*, unrelated customers. These customers were distributors of the product concerned in areas, generally Member States, in which the exporter did not have a subsidiary importing and distributing organization. They were supplied with technical support and servicing by the exporter's subsidiary company in the Community which also spent considerable sums on advertising the product concerned in the Community both directly and by means of advertising support payments made to these unrelated customers. In these cases, the Commission considered that the price paid for the product by the independent importer should be the export price and allowance be made in accordance with Article 2(10)(c) of Regulation (EEC) No 2176/84 for any differences in conditions and terms of sale with the comparable normal value. As was the case for the calculation of normal value, these allowances were limited

to non-overhead expenses which were directly related to the sales under consideration. In addition, since the exporter's subsidiary in the Community acted as its agent in such sales the export price was adjusted by 5 % to take account of a reasonable amount for agent's commission. This figure was based on the facts available to the Commission on the costs incurred by the use of such a sales channel.

- (17) In other cases, exports were made to subsidiary companies which imported the product into the Community and by a company, Fuji Xerox, in which the importing company in the Community, Rank Xerox, had a 50 % shareholding. In such cases it was considered appropriate, in view of the relationship between exporter and importer, that export prices be constructed on the basis of prices at which the imported product was first resold to an independent buyer, suitably adjusted to take account of all costs incurred between importation and resale, including all duties and taxes. In the case where the products were exported by Fuji Xerox it was claimed that the transfer price from Fuji Xerox to its parent Rank Xerox should be considered the export price since the parties alleged it was fixed on an arm's length basis. The Commission, however, considered that there was no evidence to suggest that, as for all export sales between related parties, Article 2(8)(b) of Regulation (EEC) No 2176/84 should not apply in establishing export prices.
- (18) In a number of cases, particularly in relation to exporters to 'OEMS' (companies which buy photocopiers from non-associated manufacturers for resale under their own brand name), exporters' subsidiary companies in the Community act as agents in that they process orders from, forward invoices to, and receive payment from the customers concerned. The Commission accordingly considers it appropriate to adjust the export prices to those customers by 5 % to take account of a reasonable amount for agent's commission on the basis of the best information available to the Commission.
- (19) As far as export prices were concerned, the Commission verified, for the products of each exporter, at least 70 % of all transactions during the reference period. This quantity was considered representative of all transactions of the exporters during this period.

(20) A small number of transactions not taken into consideration concerned rentals and leases. Certain exporters requested that these be taken into account, but the Commission, in view of the difficulties in some cases in arriving at a net return per machine to the company concerned and of the fact that, in any event, the investigation had covered more than 70 % of transactions, considered that such transactions should not be included.

(21) In constructing export prices where allocations of costs were necessary, these were generally made on the basis of turnover, and, in line with what was done for normal value, this turnover was generally that for total PPC business. The costs and turnover used for this purpose were generally those of the related importers' last financial year and accordingly based on audited accounts. Some importers requested that allocations be made on a different basis, e.g. on the basis of profit generated by machines as against other products, and that figures for the reference period be used. Only where the Commission received satisfactory proof that an alternative method to an allocation based on turnover would more appropriately reflect the costs incurred was such a method used.

(22) These allocated costs included all administrative and other general costs including advertising, whether financed by the exporter or by the related importer. Discounts, rebates and the value-free goods were, where possible, deducted on an actual basis, transaction by transaction.

(23) Some related importers claimed that costs incurred between import and resale varied by type of customer. Only certain of these importers satisfactorily demonstrated this to the Commission and in such cases different cost allocations were made depending on the type of customer concerned. In these cases the allocations were generally based on the individual turnovers generated by the different types of customer.

(24) To arrive at a constructed cif Community frontier export price, adjustments were also made for the Community customs duties and for a 5 % profit on sales turnover. The Commission based this 5 % on data asked for and received from a number of independent importers of the product concerned. These data showed both losses and profits of more than 10 %. In view of the Commission's understanding

of the nature of business based on the information received from importers, it was determined that a reasonable profit margin in terms of Article 2 (8) (b) of Regulation (EEC) No 2176/84 should be not less than 5 %. For the purposes of this provision, this percentage was accordingly applied to all sales of the related importers to their first independent purchaser in the Community.

D. Comparison

(25) For the purposes of a fair comparison between normal value and export prices, the Commission took account, where appropriate, of differences affecting price comparability, such as differences in physical characteristics and differences in conditions and terms of sale where claims of a direct relationship of these differences to the sales under consideration could be satisfactorily demonstrated. This was the case in respect of differences in credit terms, warranties, commissions, salaries paid to salesmen, packing, transport, insurance, handling and ancillary costs. All comparisons were made at ex-works level. Claims were also made for allowances in respect of overheads and general expenses. Article 2 (10) (c) of Regulation (EEC) No 2176/84 provides that allowance shall generally not be made for overheads and general expenses, and that allowance can only be made for any difference in conditions and terms of sale, whether overheads and general expenses or variable costs, when they bear a direct relationship with the sales under consideration. Since the Commission was not satisfied in any instance in the present case that overheads and general expenses fell into the categories of directly related expenses, no allowance was granted for differences in such costs.

(26) Some exporters claimed that allowance should be made in addition for overheads and general expenses incurred specifically by the domestic sales companies, on the grounds that all of their costs bear a direct relationship to the sales on the domestic market because they were exclusively engaged in domestic sales.

This request cannot be granted for the reasons given in recitals 11 and 12 above.

Moreover, under Regulation (EEC) No 2176/84 allowance can only be granted for differences in the factors mentioned in Article 2 (9) and which are discussed in more detail in Article 2 (10). The prin-

cial factor which the exporters consider relevant to their claim regarding the overheads and general expenses of their related domestic sales companies is 'conditions and terms of sale'. This is a relatively narrow technical term referring to the obligations inherent in a sales contract, which may be laid down in the contract itself or in general conditions of sale issued by the seller. What is decisive is whether the costs are strictly necessary to fulfil the terms of the sales under consideration. Where this first criterion is met, it must be shown in addition that these costs bear a direct functional relationship to the sales under consideration, i.e. that they are incurred because a particular sale is made. In general, overheads and general expenses, wherever they occur, do not have such a direct functional relationship and are therefore not allowable. In the present case there is no reason to deviate from this guideline. Legal distinctions such as the attribution of overall management functions to one company rather than another or to more than one company, the corporate structure of the group, or the handling of domestic sales by a sales subsidiary or a sales department, are inappropriate to an anti-dumping investigation which should be concerned with the economic reality and not merely the legal form. Such distinctions, therefore, do not give sufficient reason in themselves to deviate from the relevant legislative guideline and, in any event, as previously explained, in no instance did the overheads and general expenses concerned bear a direct relationship to the sales under consideration.

- (27) Some parties also raised the point that since, in the case of associated importers, all costs of the importer are taken into account for the purpose of constructing the export price, an identical approach should be followed where sales on the domestic market are made through an associated sales company. This argument confuses two different issues, namely the construction of the export price on the basis of a resale price of a related importer, and the comparison between normal value and export price. For the purpose of constructing the export price, Regulation (EEC) No 2176/84 prescribes the deduction of all costs incurred between importation and resale. This is designed to arrive at an export price which is not influenced by the relationship between the exporting company and its associated importers. As regards the comparison between normal value and export price, other rules apply which have led to price adjustments for all allowable factors, as explained under recital 25 above.

- (28) In this context, it is also claimed by certain exporters that, in addition to adjustments already granted

under the provisions of Article 2 (10), in particular in relation to differences in conditions and terms of sale, allowance should be made for certain costs in the calculation of any normal value which was to be compared with export prices to OEMs, who sell the imported products in the Community under their own brand names. The exporters argued that such sales were not made at the same level of trade since they were generally made in large quantities fob Japan and incurred minimal selling costs as compared to the selling costs incurred by the sales companies on the Japanese market. However, these exporters were unable to show to the satisfaction of the Commission that, had a large number of OEMs existed on the Japanese market, as in the Community, by how much, if at all, such costs would differ from those actually incurred on their domestic sales to independent purchasers.

E. Dumping margins

- (29) Normal values for each of the models of each exporter were compared with export prices of comparable models on a transaction-by-transaction basis. The preliminary examination of the facts shows the existence of dumping in respect of imports of PPCs originating in Japan from all the Japanese exporters investigated, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

- (30) The margins of dumping varied according to the exporter, and the weighted average margins were as follows:

	%
— Canon :	28,0
— Copyer :	7,2
— Fuji Xerox :	16,5
— Konishiroku :	39,0
— Kyocera :	69,4
— Matsushita :	40,3
— Minolta :	29,3
— Mita :	13,7
— Ricoh :	42,4
— Sanyo :	34,9
— Sharp :	25,7
— Toshiba :	15,3.

- (31) For those exporters which neither replied to the Commission's questionnaires, nor otherwise made themselves known, dumping was determined on the basis of the facts available.

In conformity with past practice, it is considered appropriate to use the highest dumping margin for this group of exporters.

F. Like product

- (32) Within the context of this proceeding, a number of issues have arisen regarding the definition of the like product. On the one hand, the complainants have argued that the term 'like product' should cover all PPC models, i.e. the whole range of machines manufactured in the Community. According to their reasoning, the PPC market is properly seen as a single uniform market and should not be subdivided into a series of product markets. In the complainants' view, the market is constantly changing and consequently no durable distinction between product boundaries can be identified.
- (33) In contrast, the exporters and OEMs consider that, since not all PPCs are substitutable, no single market for PPCs exists and, consequently, not all PPCs can be considered as like products. As regards the definition of the like product in the proceeding, the exporters consider that the market classification published by the independent market research agency, Dataquest, should be used to identify the like product. This classification groups together PPC models into seven product categories or 'segments' on the basis of purchase price and technical features of the machines. The most significant technical features are copy speed and copy volume. Each segment includes a range of machines classified according to these features.
- (34) The exporters' argument amounts, in effect, to the view that in this proceeding a series of like products should be defined, based on the Dataquest classification. The number of segments concerned by the investigation would be limited, however, to those in which there were both Japanese exports and Community production. According to the exporters, this approach would result in no more than three categories of like products being defined, for segments 1, 2 and 3 of the Dataquest classification, since in the other four segments (personal copier and segments 4, 5 and 6) it is alleged that there is, in effect, either no Community production or no Japanese exports.
- (35) In order to determine the definition and scope of like product in this proceeding the Commission has examined all relevant facts relating to the production of photocopiers by Community manufacturers and has compared these products with those sold by Japanese exporters in the EEC with a view to determining which machines are 'alike in all respects', or have characteristics closely resembling those of the product under consideration, as required under Article 2.12 of Regulation (EEC) No 2176/84.
- (36) The Commission has verified that Community producers as a whole manufactured a range of photocopying machines in the reference period varying from personal copiers to low-, mid- and high-volume machines. The largest machines, however, were essentially refurbished machines of Rank Xerox and were not manufactured in the reference period. By contrast, Japanese exporters did not supply to the Community market, either during or before the reference period, any high-volume machines, i.e. those which, according to the Dataquest classification proposed by the exporters, are classified in segments 5 and 6.
- (37) Given the broad similarity in the range of models supplied by Japanese exporters and manufactured by the Community producers in the market except at the high-volume end, it is evident that the principal like product issue which arises in the context of the proceeding is whether the high-volume machines produced by Community manufacturers are like products in comparison with the largest machines supplied by Japanese exporters. More precisely, the issue can be narrowed down to the question of whether Community-manufactured machines classified in segment 5 of the Dataquest segmentation are like products to Japanese PPCs in segment 4. Since there was neither Community nor Japanese production of larger copiers in the reference period (segment 6) the question of whether these products are like products in comparison with other PPCs does not arise.
- (38) After analysing all the facts, the Commission considers that the PPCs in segments 4 and 5 can be considered to be like products. This does not signify, of course, that all photocopiers are like products (personal copiers and high-volume operator-controlled console machines are evidently not like products, but rather that PPCs in adjoining segments at least can be considered to be like products. A number of factors are relevant in this context.
- (39) First, after analysing the PPC market in the Community, the Commission believes that it is best considered as a series of overlapping product segments with no clearly defined rigid boundaries

between them. In this context, evidence has been provided suggesting that there is, to some extent at least, a degree of substitutability between machines in different segments. This applies particularly to machines in adjoining segments. In effect, customers are not infrequently faced with a real choice between centralizing and decentralizing copy facilities, i.e. between purchasing a small number of higher volume machines or a higher quantity of lower volume machines. This choice is influenced to a large extent by the price or rental payable for the machine and the price per copy produced by machines in different categories.

A second factor is that with technological change the criteria defining the boundaries between segments may be modified as the market evolves. This suggests that the market is more fluid than implied by defining a series of like products corresponding to Dataquest segments.

- (40) In the light of these observations on competition between machines in different segments and the evidence submitted to it, the Commission has come to the conclusion that PPCs in adjoining segments at least are sufficiently alike to be considered as like products in the context of this proceeding. Consequently, Community production of high-volume PPCs can for the purpose of the Commission's preliminary findings be considered as like products to Japanese photocopiers.
- (41) The question as to whether injury has been suffered by Community producers of machines in all areas of the market will be dealt with below.
- (42) It has been suggested by certain interested parties that a distinction should be drawn between the 'high-volume' rental machine market and the 'low-volume' outright machine sale market, and between dealer market (machine sales through dealers) and direct market (transactions through direct-selling organizations which are frequently rentals of high-volume machines). The Commission considers that the fact that there are different methods of selling photocopiers and that some machines are rented and others are sold is irrelevant to the question of like products. What counts is whether Community producers produce the like product to that exported to the Community.
- (43) Finally, one interested party submitted that liquid toner PPCs are not a like product to dry toner

PPCs which now predominate in the market. The Commission considers that the difference in toner does not suffice to distinguish PPCs from one another.

G. Injury

(a) *Background to the development of the PPC market in the Community*

- (44) In assessing injury, the Commission has considered it necessary to bear in mind certain key developments which have affected the evolution of the PPC market in the Community over the last 10 years. The first and most significant of these was the effective ending of the worldwide control over xerographic technology held by the United States Xerox Corporation following the completion of a US Federal Trade Commission (FTC) investigation begun in 1973. The signature by Xerox of a consent decree with the FTC in July 1975 enabled Xerox copier patents to be licensed to other manufacturers and ended the control on xerographic technology enjoyed until then by this company. Prior to this date, Xerox Corporation and its European and Japanese affiliates had held a predominant share of the worldwide plain paper copier market. Certain other manufacturers had developed indirect electrostatic reprographic machines on the basis of non-Xerox technologies prior to 1975/76, but their market share was relatively small. Considerable reliance up to this date had been placed by most manufacturers other than Xerox on coated paper technology (CPC) (direct electrostatic process), particularly with regard to low-volume copiers, i.e. machines whose copy volume capacity was relatively small and whose machine speed was slow.
- (45) The opening up of the plain paper copying market in 1975/76 presented opportunities to companies to develop PPC machines and challenge Xerox' strong position in the market. The strategies chosen by the companies varied, but Japanese companies' efforts in particular were concentrated in developing PPC models at the low-volume end of the market. Some European companies followed the same course, but others began developing higher volume models and relied on Japanese manufactured low-volume models to complete their model range. The speed with which companies shifted from reliance on CPC to PPC technology varied, but by the end of the 1970s most companies had completed or were substantially advanced in the process of completing the switch to manufacturing only PPC machines.

(46) The PPC market in Europe expanded at a rapid rate from 1976 onwards and it has been estimated that machine placements increased fivefold between 1976 and 1981. Japanese exports to the Community are estimated to have increased almost sixfold from the end of 1975 to the end of 1981, thereby capturing an increasing share of the growth market in the Community.

(47) During this period, and for diverse reasons, there were a number of companies in the Community which either withdrew from the market, which failed completely, or which ceased producing to concentrate on marketing photocopiers made in Japan under their own label.

(48) The strong growth in the market has continued since 1981, albeit at a reduced rate, compared with the previous five years. Japanese exports have continued to grow at a rapid rate during this period. Additional companies have withdrawn from manufacturing in the Community to concentrate on distributing Japanese products under their own label.

(49) An important innovation in the market in the last five years has been the development and marketing of personal copiers, a concept originated by Canon, a Japanese exporter. This development helped to expand the market for small copiers and simultaneously increased competition at the low end of the market.

(b) Injury caused to Community producers

(50) As regards injury caused by the dumped imports, the evidence available to the Commission shows that imports of PPCs into the Community (excluding Spain and Portugal) from Japan increased from 272 000 units in 1981 to 492 000 units in 1984, a rise of 81 % over the period. Taking into account developments in the reference period, the average number of units imported from Japan per month more than doubled from 23 000 per month in 1981 to 48 000 over the period January to July 1985, an increase of 112 %. The estimated Community market share of new machine sales held by the exporting companies increased from 81 % in 1981 to 85 % in 1985 in the reference period. These figures include machines imported by the European producers themselves from Japanese exporters, which were stable at around

5 % of total Japanese imports in the period 1981 to 1985.

Approximately the same trend of increase in market share is shown by data on placement estimates. These show an increase in market share held by Japanese producers from 81 % in 1981 to 83 % in 1984. Between 1980 and 1981, however, Japanese market share in terms of placements rose from 73 % to 81 %.

(i) Reference period

(51) Most of the Community producers' sales were made through their own sales forces directly to end users. Japanese exporters, in general, sold via related subsidiary companies to independent dealers. In order to render these sales prices comparable, an adjustment would have to be made to take account of these facts. This adjustment proved difficult to calculate.

In addition, the comparison of models with different features and capabilities is a highly complex task which increases in difficulty as the machine size becomes larger. Technical differences between machines require adjustments which are difficult to quantify with accuracy.

(52) Where individual models could be reasonably compared, and where sales of the dumped PPCs were made by related importers to end users and could accordingly be compared to the sales of most of the Community producers, a detailed comparison was made based mainly on information received from the exporters and the OEMs. The comparison at this stage could only be made for a minority of models, i.e. where it was considered that no adjustment was needed to take account of different facilities and features.

Three exporting groups supply PPCs direct to end users in the Community in significant quantities and in these cases average undercutting of up to 12 % was found.

(53) In order to make a reasonable comparison in other cases, i.e. where the Japanese importers sold to dealers, the Community producers' prices to end users were adjusted to take account of costs incurred and profit made at the dealer level. In other words, a national price to dealers was calculated for those Community producers which sold only to end users by deducting from their end-user prices the costs which they would not have

incurred had they sold to dealers. A reasonable percentage for profit was also deducted, the amount being based on the information available to the Commission on sales by independent importers, OEMs for example, who sold to end users. On this basis a margin of 5 % was considered reasonable.

While allowing for the fact that such a comparison had certain imperfections, in the cases where models were considered comparable and, after suitable adjustment for cost and profit to take account of the different levels of trade, significant undercutting was found. This was particularly the case for personal copiers where undercutting of 40 % during the reference period was common. For the other segments of the market, undercutting based on average prices was found to be up to 23 %.

(ii) Period 1976 to 1984

(54) The Commission also examined pricing trends in the Community since 1976 with a view to identifying when price reductions occurred and analysing the resultant effects on the market. The Commission's analysis was based on generally available sources of information, specifically the German supplement of Dataquest's Copying and Duplicating Industry Service and various issues of Info-Markt's 'Ratgeber Kopierer' handbook. The data relate to the German market, which is the largest PPC market in the Community, and developments on it were considered representative for the Community as a whole.

(55) Taking the period 1976 to 1980, it is estimated that the weighted average retail sale prices of PPCs on the German market fell by 3 % per year. In particular, weighted average retail sale prices for the low-volume PPCs (identified by Dataquest in segments 1 and 2) are estimated to have fallen by 6 % per annum during this period. The largest price decreases (7 % per annum) over the period 1976 to 1980 related to the smallest PPCs (those classified in segment 1 of the Dataquest classification) which accounted for around 80 % of the PPC units supplied in Germany in 1980 and was the segment showing the largest growth during the period.

Both Japanese exporters and Community producers reduced prices during this period although the evidence shows that weighted average annual percentage reductions of Community producers

were less than those of Japanese companies. Weighted average resale prices of PPCs identified in segment 1 of the Dataquest classification and supplied by Rank Xerox, the only complainant producing models in this segment throughout this period, are estimated to have fallen by 3 % a year at this time. The information also shows that all six Japanese exporters which sold models in significant quantities in segment 1 reduced prices during this period, and that those which had obtained the highest individual market shares by 1980 showed higher than average annual reductions. These reductions ranged from 8 % to 12 % annually, one Japanese exporter thus reducing its prices by approximately 45 %. These price developments occurred over a period in which retail prices in Germany increased by 22 %.

The weighted average of the Community producers' prices in 1976 was higher than that of the Japanese exporters.

(56) In the same period, 1976 to 1980, the data showed that the share of the German market in terms of machine placements held by Japanese exporters and OEM importers supplying PPCs manufactured in Japan increased substantially. This was especially the case in segment 1 where the most significant price decreases were made by all competitors but particularly by the Japanese exporters. In this segment, the Japanese share of machine placements is estimated to have increased from around 30 % in 1976 to around 70 % in 1980.

(57) With regard to the period 1981 to 1984, detailed price comparisons on the German market of the type formerly undertaken by Dataquest are not available. An examination of resale prices in the Info-Markt publication over this period shows, nevertheless, continued evidence of across-the-board price reductions by Japanese manufacturers and their distributors. These reductions are observable on all types of machines exported to the Community, tending to appear more often in the course of the second year of marketing of a model. Prices of Community manufacturers, on the other hand, remained more stable for longer periods of time and price reductions tended to be smaller than those of the Japanese exporters.

(58) Aside from the fall in prices, the period 1981 to 1984 was characterized by more frequent changes in models by Japanese manufacturers and the addition of technical features to basic models. Unless prices are increased correspondingly, the latter development constitutes a *de facto* price decrease.

(59) Simultaneously with the continued depression of prices on the Community market during the period 1981 to 1984, the part of the Community market taken by Japanese producers and importers distributing their products continued to grow, particularly at the low to mid volume end of the market.

(iii) Conclusion

(60) In conclusion, the information relating to the period 1976 to 1984 shows clear evidence of an overall fall in PPC prices in a period during which prices generally were rising. This fall in prices was combined with a massive increase in the market share held by PPCs of Japanese origin. No sufficient evidence has been given to explain this gain in market share on any overall ground other than the prices at which they were sold.

There is evidence, limited in scope, but clear in nature, that some price undercutting existed during this period at various times and places, and probably occurred more widely.

In addition and more importantly, the information available shows clear evidence of price undercutting by the Japanese exporters during the reference period, albeit based on a comparison of a limited number of models and including in most cases an adjustment to take account of cost differences for sales at different levels of trade.

(c) *Definition of Community industry in the context of the proceeding*

(61) The Community industry in respect of which the impact of the dumped imports must be assessed is defined under the terms of Article 4 (5) of Regulation (EEC) No 2176/84 to be the domestic producers of the like product subject to the proceeding (plain paper copiers) except that, when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term Community industry may be interpreted as referring to the rest of the producers.

(62) In assessing the scope of Community industry for the purposes of injury determination in the context of this proceeding, the Commission has not included Develop, one of the original complainants which withdrew from CECOM in May 1986 following its takeover by Minolta, a Japanese exporter.

Japanese subsidiary companies producing photocopiers in the Community have also been excluded. The remaining producers — the four CECOM complainants — account for a major proportion of the industry.

(63) On the question of the definition of Community industry allegedly injured by the dumped imports, a number of issues have arisen in the proceeding. The exporters and certain OEMs argued that the fact that three of the four CECOM members had either concluded OEM-type arrangements with Japanese suppliers or, in the case of Rank Xerox, had been supplied by a related company (Fuji Xerox) in which it held a 50 % shareholding, precluded them from being considered as part of the Community industry for the purposes of the assessment of injury. In support of their position, the exporters cite the substantial imports made by CECOM members over a long period of time, and argue that CECOM members were not just temporarily importing to protect a customer base or maintain a market share but were instead acting solely to maximize profits by sourcing from the cheapest supplier. This argument is considered by the exporters all the more pertinent in the case of Rank Xerox which, in addition, is supplied by Fuji Xerox not just with photocopiers, but also with parts for manufacturing photocopiers for distribution in the Community.

(64) The question of whether the term 'Community industry' in Article 4 (5) of Regulation (EEC) No 2176/84 should include Community producers who import dumped goods is a matter which can only be decided on a case-by-case basis and in the light of all relevant facts regarding the nature of the links between Community producers and the exporters concerned. As a general observation, however, it should be noted that it is now entirely normal for large firms engaged in international business to buy part of their range of models from other producers.

To establish the scope of Community industry for the purposes of this proceeding, the Commission examined the history of the relationship between the Community producers and their Japanese suppliers, the volumes imported, the timing and the effect on the Community producers' business of the dumped products purchased by these producers.

- (65) With regard to the two Community producers (Océ, Olivetti) without corporate links with their suppliers, the Commission observed that the strategies followed by each company were different. Océ developed and marketed a mid-volume PPC as early as 1972 and relied initially on CPC copiers for lower volume sales. As the market for PPCs developed, however, Océ recognized the need to supply low-volume PPCs to its customers, and from 1975 began importing such a product from a Japanese supplier for resale under its own name. Between 1975 and 1978 Océ carried out basic research in the field of PPCs and this resulted in a project to research and develop a specific low-volume model to replace the Japanese imported model. This project was revised on several occasions at considerable cost to the company but was abandoned in 1981 when it became clear that it would be impossible to earn an adequate return in the face of the low prices prevailing on the market. In the light of this situation, Océ continued to import low-volume PPCs on an OEM basis from Japan whilst concentrating its own manufacturing on mid-volume PPCs. A new successor low-volume product research and development programme was launched in 1982 but this also has not been brought to fruition because of depressed market prices.
- (66) Olivetti began active development work on manufacturing PPCs following the FTC consent decree and the licensing of Xerox copier patents in 1975/76. During the development phase, the company purchased a low-volume copier from a Japanese supplier on an OEM basis which it intended to replace by its own production of copiers at a later stage. The company produced and marketed a mid-volume copier from 1978 onwards. In 1981 Olivetti supplemented its 'own manufactured' models by also producing a low-volume copier. In the next two years (1982 to 1983) the company's reliance on OEM imports was reduced essentially to the import of only one model-type with technical features between those of its 'own manufactured' low- and mid-volume products. The company's dependence on Japanese imports increased subsequently, however, since the company was unable to market a successor product to its mid-volume copier. An economic evaluation of this project showed a negative return on investment at the depressed prices prevailing at the time of the investment decision, and production was therefore not begun. In recent years the company has also imported personal copiers from Canon in response to a perceived need to respond to its customers' full range of copying needs.
- (67) The volumes of PPCs imported by the two companies over the period 1982 to 1985 remained relatively stable as a percentage of their own production in one case, and showed a tendency to rise in the other. Over the period as a whole, however, the volume of each company's own manufactured models exceeded OEM imports by a considerable margin. The impact in terms of sales turnover of the OEM imports for Océ was noticeably less in percentage terms than on volumes imported on account of the fact that the models purchased from Japan were machines with a lower value than those produced by the company itself. As regards Olivetti, the percentages of turnover and of volume were similar.
- (68) With respect to the number of PPCs purchased by the two Community producers from Japan, it is estimated that these amounted to only 3 % of total Japanese imports in the period 1981 to 1985.
- (69) As regards the pricing policy followed by the two Community producers for the imported models, it was found that prices were at least as high as, and generally higher than, those of the corresponding models sold under the manufacturers' brand names. Prices of up to 14 % higher compared to the model sold by the manufacturer were observed in this context.
- (70) In the light of the low volume of imports purchased by the two Community producers on an OEM basis, and the price policy followed by them, the Commission concludes that they cannot be considered to have inflicted injury on themselves through their importation of PPCs from Japan.
- (71) The Commission also investigated whether the imports purchased by the two Community producers from Japan may have had a contributory effect on lowering the overall price level observed in the Community, thereby harming the complainants' own interests. Although some incidental effect may have been caused by these actions, the Commission considers that this is substantially outweighed by the effects on prices resulting from the massive volume of imports supplied on the Community market by Japanese exporters and their importers. Any indirect detrimental price effects, therefore, of the Community producers' imports on the prices of their own manufactured PPCs were minimal and thus cannot be considered significant in the context of this proceeding.

(72) As regards the reasons for import, it is important to note that the policy followed by Community producers of offering a broad range of models to their customers was entirely consistent with generally observed strategies pursued by all sellers in the market. The reason why practically all companies active in the photocopying industry in the Community (both Japanese exporting groups and Community producers) follow this policy is because of the need to cater for the customer's total copying requirements. The completeness of the range of machines varies from company to company. At the very least, however, a low- and a mid-volume copier are perceived by most companies as being essential components of the product range. Océ and Olivetti both offered their customers a range of models incorporating low- and mid-volume copiers.

(73) Overall, and in the light of the facts available to it, the Commission considers that, in importing PPCs on an OEM basis from Japan, Océ and Olivetti can be considered to have done nothing which caused them to suffer losses greater than they would have suffered if they had attempted to base their own PPC business on the marketing of a more limited range of models. Consequently, the two producers concerned need not be excluded from consideration as part of the Community industry for the purposes of injury determination in this proceeding.

(74) For the Community producer (Rank Xerox) with a corporate relationship with its Japanese supplier (Fuji Xerox), the Commission found that Rank Xerox had been supplied with machines from Fuji Xerox since 1978. The frequency of imports since 1978 has been highly irregular — nothing was imported in 1981, for example — and volumes imported have varied significantly from model to model. Generally, the imports consisted of machines at the low-volume end of the market supplied in advance of the manufacture of the equivalent model by Rank Xerox in the Community. The imports were discontinued and the market supplied by machines produced in the Community as and when production came on stream.

In addition to the imports of low-volume models, in 1984 Rank Xerox also imported from Fuji Xerox, in small quantities, one mid-volume machine which was not subsequently produced in the Community. The new models developed to replace this machine are, however, produced in the Community.

The Commission ascertained that up to 10 % of the imports from Fuji Xerox were used by Rank Xerox for internal uses and for training and demonstration purposes. In addition, a large percentage of the Fuji Xerox imports were re-exported outside the Community. Overall, the Commission verified that just over half of the Fuji Xerox imports were actually sold in the Community and these accounted for no more than 7 % of total Rank Xerox sales in the Community in the period from 1981 to the end of the reference period.

With respect to the resale prices of the Fuji Xerox sourced machines, these were priced at the same levels as the identical machines produced in the Community.

(75) In assessing whether Rank Xerox should be considered as part of Community industry for the purposes of determining injury in this proceeding, the Commission investigated whether, in the light of the special corporate relationship between this producer and its Japanese supplier, Rank Xerox' actions in importing were motivated primarily by the need to protect itself against low-priced imports from Japan which were having an impact on its market share at the low-volume end of the market.

In support of its position, Rank Xerox contended that the original corporate decision to obtain some low-volume machines from Fuji Xerox and set up production facilities in the Community based on the supply of low-cost parts from Japan was influenced significantly by the state of the Community market at the time (1975 to 1977), and the rapidly rising volume of low-priced Japanese imports in those years. In the light of this situation and the need to be able to compete with Japanese producers who had set market prices, Rank Xerox considers that its actions were self-protective in nature and minimized the injury to the company's overall PPC business.

(76) In considering the arguments for and against the inclusion of Rank Xerox in 'Community industry' in the context of this provisional-duty Regulation, even if the exporter's argument were valid, analysis of the Community industry shows that the remaining Community producers either manufactured PPCs in the same segment as Japanese products or produced machines in adjoining segments of the market which competed to some extent with the Japanese imports. Thus, in the reference period, Tetras produced personal copiers, Olivetti a low-volume copier (segment 1), and Océ three mid-volume copiers (segment 4).

In addition, the Commission verified that one Community producer other than Rank Xerox has had plans to manufacture a low- or mid-volume copier (segment 2 or 3) but has been forced to postpone its introduction because of the impossibility of earning an adequate return on investment owing to decreased prices in the market. Evidence produced in this context included a full cost analysis of the project, details of research and development expenses, and documentation on the prototype.

(77) In the light of the Commission's findings, it must be concluded that there was injury to Community producers whether Rank Xerox' production of low-volume copiers is included within the term Community industry or not. Consequently, the Commission determines in its provisional findings that the term 'Community industry' for the purposes of injury determination comprises the complainants' production of PPCs with the exception of PPCs classified in segment 6 of the Dataquest classification which were neither exported by Japanese exporters nor produced by Community industry in the reference period and for which, consequently, no injury finding can be made.

(78) Certain exporters had argued that at least some, if not all, Rank Xerox production in the Community should not be included in the Community industry for the purposes of the assessment of injury. However, the Commission, having established that the inclusion of all such Rank Xerox production resulted in a slightly lower injury threshold than if it had been excluded, considered that, at least for the purposes of provisional findings, Rank Xerox production should be included in the assessment of the impact of the dumped imports.

(d) *Impact of the dumped imports on Community industry*

(79) In assessing the impact on the Community industry concerned resulting from the dumped imports, the Commission has considered carefully the extent of any injury that may have been caused by the largest Japanese machines (segment 4 copiers) imported in the reference period to Community production of higher volume machines (classified in segment 5). While the Commission considers that these products are sufficiently alike to be deemed 'like' products in the context of this proceeding, this does not obviate the need to give special consideration to the ques-

tion of whether any injury may have been caused by the Japanese imports in question.

The prime source of any injury suffered by Community producers must be that due to imports with similar technical features. In the case in question, the Commission considers that, since the Community producers held a strong position in segment 5 of the market, and since there were no Japanese imports into the Community of PPCs classified in this segment (those with a machine speed from 70 to 90 A4 copies per minute and a monthly copy volume of between 25 000 and 125 000 copies), no injury has been caused to Community production of such machines by Japanese imports.

(80) The Commission has observed however that, since the end of the reference period, Japanese producers have begun exporting higher volume copiers to the Community. At the stage of its provisional findings, however, the Commission has left open the issue of whether such imports may threaten to cause injury to the Community industry.

(81) The impact of the low-priced imports has been to decrease progressively the profitability of Community producers taken as a whole on the sales of their own manufactured photocopiers. Leaving data for Tetras aside on the grounds that the losses suffered by it were in part due to start-up costs incurred in 1984 at the beginning of production, the weighted average return on sales before tax for the remaining three Community producers fell by more than half between 1983 and 1984 and is known to have fallen further in 1985 to only just above break-even level. The results of the three companies concerned were mixed. Whilst one managed to remain profitable in this period, albeit at very low levels, the two others experienced overall declines in profitability, including losses. One of these companies incurred significant losses in 1985.

The effects of reduced profitability have been manifold. The industry has been forced to scale down its research and development expenditures on PPC machines to a level which is substantially below that of its Japanese competitors. Data available to the Commission suggest that, on average, Japanese companies spend considerably more on research and development than Community producers in terms of percentage of turnover. The inability to devote sufficient resources to research and development threatens the future of the industry and its ability to compete with Japanese imports.

(82) The expectation of continuing depressed prices has also resulted in the postponement or abandonment of the launching of new models by Community producers, most notably in the personal and low-volume copier sector. This has prevented producers from activating viable cost-effective projects in this area. This situation persists despite the major efforts made by Community manufacturers to cut fixed costs in order to meet the lower price levels prevailing on the market. The drive to cut costs led, *inter alia*, to some reduction in employment in the Community industry as a whole (reduction of 8 % from 1982 to 1984).

(83) Despite concentrating their manufacturing efforts on a limited range of models, Community producers have not operated with satisfactory levels of capacity utilization. The loss of market share has also meant that the Community producers have been unable to benefit from economies of scale arising from higher production volumes which their Japanese competitors have enjoyed.

(84) While it is difficult to quantify accurately the injury caused to Community producers resulting from reduced economies of scale in production and the increased profit that would have resulted if manufacturing and general overheads could have been spread over a larger volume of units, one company estimated that of total lost profits due to dumping by Japanese producers, as much as one-third may have been due to the inability to benefit from these economies of scale.

(85) The Commission has considered whether injury has been caused by other factors, such as the volume and prices of undumped imports or a stagnation in demand. On neither of these counts, however, is there any relevant evidence. The amount of the market supplied by other exporters is estimated to have remained at around only 1 % from 1981 to 1985. With regard to consumption, the investigation has shown that between 1981 and 1985 the market for these products in the EEC increased by 100 %. During the same period sales of the Community producers on the EEC market did not increase as rapidly as demand and as a result their market share fell from around 19 % to 15 %.

(e) *Issues relating to injury raised by the exporters and importers of Japanese PPCs*

(86) In assessing injury the Commission considered the views expressed by a number of exporters and

OEMs that the fundamental cause of material injury to Community producers since the licensing of the Xerox patents on xerographic technology was their decision to emphasize coated paper copier technology and not commit sufficient resources to develop new and effective models of photocopiers incorporating PPC technology. The exporters argue in this context that those companies which withdrew from manufacturing copiers in the late 1970s and early 1980s were victims largely of their incorrect investment decisions. As regards the complainants in the current proceeding, the exporters contend that Océ and Olivetti hesitated before making the CPC-PPC transition at a late stage and chose to minimize their competitive disadvantage by the OEM route while belatedly preparing to manufacture their own PPC products.

(87) In order to assess whether the alleged failure of certain of the complainants to switch from CPC to PPC technology was a material cause of the subsequent injury suffered by them, the Commission has examined the facts relating to the two companies concerned. The first observation to make in this context is that, contrary to the exporters' assertions, one company, Océ, had already produced a PPC (1700 model) before the termination of the Xerox control over xerographic technology patents. At the same time, it continued to rely on CPC technology for low-volume copiers. The opening up of the market in 1975/76 left the company short of a low-volume PPC product and its OEM imports began at this time. However, as shown earlier, the company had every intention of replacing such imports as and when it developed its own low-volume PPC copier. The fact that it was unable to do this was a reflection of the low prices prevailing on the market and the resulting impossibility of earning an adequate return.

Thus, even if the exporters' argument that Océ was late in making a wholehearted commitment to PPC technology were accepted, subsequent efforts by the company demonstrate that it overcame any late start in the low-volume area but was thwarted from proceeding further because of the impossibility of marketing its own manufactured product at prices competitive with the Japanese product.

(88) With respect to Olivetti, the company's first 'own manufactured' PPC was marketed in 1978 after several years' development and testing work. The company's reliance on PPCs from Japan was

reduced over a number of years as its own PPC production activities increased and CPC products were replaced. In the period 1982 to 1983 essentially only one model-type was supplied by Olivetti as an OEM to the Community market. Dependence on OEM supplies increased thereafter up to the end of the reference period (July 1985). Olivetti did not manufacture a replacement mid-volume copier for its previous series of such models because of the impossibility of earning an adequate return on its investment.

In Olivetti's case, even if the exporters' arguments about late entry into the PPC market were accepted, the facts show that the company developed its PPC activities to a position where it offered a range of own-manufactured machines to its customers. The fact that it was unable to pursue or develop this strategy subsequently is not a reflection of an inherent handicap arising from a slow start in adapting to PPC technology.

- (89) In summary, the Commission does not consider that the allegations that any injury suffered by Océ and Olivetti is attributable to their late start in embracing CPC technology are borne out by the facts in this case. As regards the other two Community producers, Rank Xerox and Tetras, the allegations are obviously without relevance since, in the first case, Rank Xerox has always supplied PPC products and, in the latter, Tetras only recently began production of personal copiers.
- (90) The allegations made by the OEMs that the high share of Japanese exports is caused by their superiority in terms of range, quality, reliability and rate of innovation over those of the European producers and that, consequently, the technological gap is unbridgeable are not supported by sufficient evidence. The likelihood of this occurring, however, will increase if European producers are unable, by virtue of the low or negative profit margins on existing products, to devote sufficient resources to research and development for developing new products.

(f) *Conclusion*

- (91) In conclusion, the volume of the dumped imports, their market share, the prices at which they have been offered for resale in the Community, and the loss of profits suffered by the Community industry lead the Commission to determine that the effects of dumped imports of PPCs originating in Japan taken in isolation, have to be considered as causing material injury to the Community industry.

H. *Community interest*

- (92) In assessing whether it is in the interests of the Community to take measures against the dumped photocopiers from Japan which have been shown to cause injury to Community producers, the Commission has taken into account the views of all parties concerned, in particular the producers, exporters and OEMs, and the likely effects on prices and competition which could be expected to ensue from the imposition of provisional anti-dumping duties. The Commission has also been guided by the fact that the photocopier industry forms a key part of the office equipment industry as a whole, and that the technology employed will be crucial for the development of future reprographic products.
- (93) From the side of the Community producers, the elimination of injury due to dumping is important to their survival as manufacturers and their ability to compete with Japanese exports both within the Community and worldwide. The evidence available to the Commission suggests that if measures are not taken swiftly the continuance of the Community industry with its existing structure in its current form is likely to be in doubt.
- (94) It is clear, on the other hand, that the imposition of anti-dumping duties will have a number of consequences in the Community. Those importers who distribute Japanese PPCs on an OEM basis argue, for example, that duties will penalize them more than the exporters themselves and that their survival as distributors and, in some instances, manufacturers of reprographic products other than PPCs could be in jeopardy. At the very least, they maintain that they stand to lose a substantial market share since they do not possess the financial resources to absorb duties and consequently run the risk of their OEM products becoming uncompetitively priced. In such circumstances, the OEMs foresee the distribution of photocopiers being progressively taken over by Japanese exporters themselves. They allege that they stand to lose more than any other group involved in the proceeding and argue that they must be accorded separate and special treatment.
- (95) The Commission has considered these arguments and has concluded that the OEMs' difficulties result principally from the nature of the business arrangements they have concluded with their Japanese suppliers and their role as distributors of Japanese photocopiers.

With regard to their business links with Japan, some OEMs have made long term arrangements obliging them to purchase minimum quantities of photocopiers from Japanese exporters. The fact that the OEMs may be disadvantaged by the imposition of anti-dumping duties is a consequence which flows directly from the negotiated arrangements which they concluded with their suppliers. The Commission, while noting the position in which the OEMs find themselves, does not, however, consider that this in itself is a justification for not taking measures on ground of Community interest.

As to their position as distributors of photocopiers, the Commission has noted that the OEMs have lost considerable market share over the last few years. In addition, it is evident that these companies are vulnerable to the setting up of new distribution systems and/or manufacturing facilities in Europe by Japanese exporters irrespective of whether anti-dumping duties are imposed or not.

- (96) With regard to the argument that duties may damage the overall business of OEMs with adverse consequences on employment in the Community, the Commission considers that this interest has to be weighed against the multiple consequences, including those on employment, of not offering protection to a viable European manufacturing industry of PPCs. The Commission considers that, on balance, the Community's interests lie more in protecting a manufacturing capacity in the EEC as a whole from the injurious effects of dumped imports than protecting or at least appearing to favour a dealer/distributor business which is dependent to a considerable extent on imports.
- (97) The same consideration applies to companies which manufacture some reprographics equipment but say that their overall business is dependent on their OEM sales of imported goods.
- (98) In conclusion, the Commission, while acknowledging the vulnerable position of OEMs in the proceeding, can see no justification, legal or economic, for according them special treatment, even if such treatment could be so devised within the provisions of Regulation (EEC) No 2176/84.
- (99) It has been submitted also that it is not in the Community's interest to take anti-dumping

measures since these will reduce competition in the Community, increase the risk of restoring oligopolistic or monopolistic market conditions, protect a US-owned company, reduce supplies due to the inability of Community producers to take up demand created by a fall in Japanese imports, reduce employment in the areas of importation, distribution and technical service, and increase prices to the consumer.

- (100) As far as the effects on competition within the Community are concerned these will, in view of the limited period of validity of a provisional Regulation, be of a temporary nature. Accordingly, it will not be contrary to the Community's interests to impose provisional anti-dumping measures in the present proceeding on the grounds of a possible detrimental effect on competition within the Community.
- (101) The question has also arisen whether it is in the Community's interest to take measures which would substantially benefit a US-owned manufacturer (Rank Xerox) who produced machines in the Community from kits supplied by Fuji Xerox.

The Commission considers that the fact that one of these companies is US-owned is irrelevant. What matters is whether it produces the like product within the Community. As regards the allegation that Rank Xerox merely manufactures photocopiers from kits imported from Japan, the Commission is satisfied that the value added by Rank Xerox in all its manufacturing operations in the Community is substantial enough for Rank Xerox' manufacturing operations to be considered as part of the Community industry.

- (102) With regard to the argument that measures will lead to a reduction in supplies or even to shortages, the Commission considers that there is no evidence that the elimination of injury due to dumping will give rise to a reduction of supplies. In the first place, the Community industry has the capacity to increase its output considerably and, in any event, anti-dumping measures will not in themselves alter the volume of PPCs available for export to the Community.
- (103) As to the effects on employment in the PPC business in the Community as a whole, it is anticipated that any changes in the overall number of employees in this industrial sector as a result of provisional measures being taken will be limited.

- (104) Finally, the issue has been raised whether it is in the Community's interest if, as a result of anti-dumping measures, the prices of Japanese photocopiers were to increase, thereby resulting in higher prices to consumers.

The Commission accepts that these measures may result in a price increase in the short term. However, in view of the extent of the injury caused by dumped imports and the importance of the Community industry injured, it is considered that, in this case, the necessity to ensure the stability of the industry in question is more important. Indeed, in the long term, it is in the consumers' interest to have a viable Community industry which will compete with and offer an alternative to imports.

- (105) In conclusion, the Commission considers that it is in the overriding interest of the Community that injury due to dumping be eliminated and that the Community industry be accorded protection against dumped imports emanating from Japan which have caused injury to it. In order to prevent further injury being caused during the remainder of the proceeding, the action to be taken should take the form of a provisional anti-dumping duty.

I. Undertaking

- (106) Kyocera, a Japanese exporter which ceased exporting to the Community after the reference period, offered an undertaking regarding its future exports to the Community.

This undertaking was not accepted by the Commission at the provisional stage and acceptance will be reconsidered should definitive measures be proposed.

J. Duty

- (107) It was considered whether the level of duty should be below dumping margins provisionally determined, if such lesser duty would be adequate to remove the injury caused by the dumped imports. To reach a provisional finding on what duty was required, it was considered appropriate to look at the return obtained by the Community producers for the sale of PPCs during the period under consideration. In this context, the Commission examined the audited accounts for the 1985 financial year for the three companies concerned, Rank Xerox, Océ and Olivetti, and isolated the return on sales of PPC machines in the Community. These

data were then weighted by sales turnover and compared with the minimum return regarded as necessary for the industry to operate competitively and commercially.

- (108) As regards the choice of a reasonable rate of return, the Community industry claimed that a return on assets (before tax) of not less than 18 % was required for an industry in this sector to operate competitively and commercially, taking account of research and development and advertising requirements and the cost of the appropriate financing in the Community.

Research and development requirements arise from the short product life-cycle of PPCs and the necessity for companies to be in a position to introduce new models at regular intervals. This in turn demands the continuous existence of a number of research and development programmes running in parallel. There are considerable financial risks in undertaking such programmes and the costs of financing them at normal market rates in the Community are considerable. Account should also be taken of the need of the Community producers to finance advertising and publicity campaigns with respect to both new and existing products at similar levels of expenditure to those of the exporters concerned.

In view of the foregoing, a net profit of 12 % on revenue before tax was considered an appropriate minimum.

- (109) On the basis of the facts available to it, the Commission considered that the difference between the return obtained and the return regarded as necessary resulted substantially from the impact of the dumped imports on the Community industry.

- (110) In order to establish the rate of duty to be imposed provisionally, the Commission calculated, for Rank Xerox, Océ and Olivetti, the increases in revenue which would be required to enable them to earn a 12 % profit before tax. This was not done for Tetras at this stage because its financial results were heavily influenced by the company's start-up costs and its turnover was minimal by comparison with the other three companies concerned.

This increase was arrived at for each company by applying a factor to the 1985 figures which calculated the revenue required for the increased profit to be achieved. These figures were then weighted

by the turnover of each company to give an average increase in the price level per machine for the Community industry as a whole (excluding Tetras). This calculation made no allowance for a possible increase in sales by the Community producers.

(111) To establish the duty applicable at the Community frontier appropriate to bring about the desired increase in prices at the end-user level, the Commission calculated for each exporter's sales to the Community the costs incurred by the exporter's subsidiaries between the frontier and resale in the Community. These are the costs incurred by the Japanese exporter's related importers between importation and resale of the product concerned to independent customers who, for the most part were dealers, but in some cases end users. A profit margin of 5 % was attributed to the exporter's subsidiaries. Although the Community producers sold mainly to end users, for the purposes of taking provisional measures, account was not taken of any additional costs incurred by dealers buying PPCs from Japanese exporter's subsidiaries and selling to end users.

(112) Each subsidiary's costs and profit were expressed as a percentage of the price at the Community frontier and then weighted according to the turnover of each company's exports to the Community to give one factor representing the difference on a weighted average basis between that price and the sale price in the Community for Japanese exporters as a whole. The percentage increase in revenue required by Community producers to enable them to earn a 12 % profit was then expressed as a percentage of the price at the frontier. This calculation gave a price increase of 15,8 % at the frontier.

Accordingly, and in order that the injurious effect of the dumped imports be eliminated, it was considered appropriate that the amount of provisional duty to be imposed should be 15,8 % for the exports of all companies for whom a dumping margin equal to or higher than this percentage had been found. For the remaining companies the provisional anti-dumping duty should equal the dumping margin established.

(113) The provisional anti-dumping duty to be imposed shall apply to all models of plain paper copiers from Japan with the exception of those machines classified in Dataquest segments 5 and 6. To deter-

mine the plain paper copiers to which provisional duties shall apply, the appropriate criterion is machine speed, since monthly copy volume is not a criterion which can be applied conveniently by customs authorities. There is a slight overlap between the machine speed range of segment 4 copiers (40 to 75 copies per minute of A4 size paper) and those of segment 5 copiers and above (70 copies per minute or more of A4 size paper). Since, however, in the reference period there were no Japanese exports of segment 4 copiers with a machine speed in the range 70 to 75 copies per minute, the lower machine speed criterion for segment 5 copiers can be retained as a cut-off point. Accordingly, provisional anti-dumping duties shall not be applied on all plain paper copiers from Japan having the capacity to operate at a copy speed of 70 or more copies per minute of A4 size paper.

(114) All the findings made for the purposes of this Regulation are provisional, and may have to be reconsidered for the purposes of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of photocopying apparatus incorporating an optical system falling within subheading 90.10 A of the Common Customs Tariff, corresponding to NIMEXE code 90.10-22 and originating in Japan.

2. The rate of duty shall be 15,8 % of the net free-at-Community-frontier price before duty, with the exception of imports of the products specified in paragraph 1 of this Article which are manufactured and exported by the following companies, the rates of duty applicable to which are set out below:

— Coper Company Ltd, Tokyo :	7,2 %
— Mita Industrial Company, Osaka :	13,7 %
— Toshiba Corporation, Tokyo :	15,3 %.

3. The duty specified in this Article shall not apply to those products described in paragraph 1 which have the capacity to operate at a speed of 70 copies per minute or more of A4 size paper.

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

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

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2176/84, the parties concerned may make known their views and apply to be heard orally by the

Commission within one month of the date of entry into force of this Regulation.

Article 3

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

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2176/84, Article 1 of this Regulation shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 21 August 1986.

For the Commission

Willy DE CLERCQ

Member of the Commission
