

**COUNCIL REGULATION (EEC) No 1251/91**

of 13 May 1991

**imposing a definitive anti-dumping duty on imports of audio tapes in cassettes originating in Japan and the Republic of Korea, collecting definitively the provisional duty and terminating the procedure concerning Hong Kong**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community<sup>(1)</sup>, and in particular Articles 9 and 12 thereof,

Having regard to the proposal by the Commission after consultation within the Advisory Committee as provided for under the above Regulation,

Whereas :

**A. PROVISIONAL MEASURES**

- (1) The Commission, by Regulation (EEC) No 3262/90<sup>(2)</sup>, imposed a provisional anti-dumping duty on imports into the Community of audio tapes in cassettes (hereinafter referred to as audio cassettes) originating in Japan, the Republic of Korea and Hong Kong and falling within CN code 8523 11 00. The duty was extended for a maximum period of two months by Council Regulation (EEC) No 578/91<sup>(3)</sup>.

**B. SUBSEQUENT PROCEDURE**

- (2) Following the imposition of the provisional anti-dumping duty, all the exporters mentioned by name in Regulation (EEC) No 3262/90, as well as the representatives of the complainants, requested and were granted an opportunity to be heard by the Commission. They, as well as one importer, also made written submissions making their views known on the findings.
- (3) The Commission continued to seek and verify all information it deemed to be necessary for its determinations. For this purpose, an investigation was carried out at the premises of the following exporter :

— Hitachi Maxell, Tokyo, Japan.

- (4) Upon request, the parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to these disclosures. Their oral and written comments were considered and, where appropriate, the Commission's findings were modified to take account of them.
- (5) Owing to the complexity of the proceeding, in particular to the detailed verification of the voluminous data involved and the numerous arguments put forward, the investigation could not be concluded within the time limit provided for in Article 7 (9) (a) of Regulation (EEC) No 2423/88.

**C. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT, COMMUNITY INDUSTRY**

- (6) In its provisional findings (recitals 9 to 12 of Regulation (EEC) No 3262/90) the Commission found that although there are various models of audio cassettes differing in length and coating of tape and design of the cartridge, these models have the same basic physical characteristics, application, use and channels of distribution.
- (7) This finding was questioned by one exporter who requested that audio cassettes whose tapes were coated with a metal pigment (hereinafter referred to as metal audio cassettes) should be excluded from the scope of the proceeding. This exporter submitted that metal audio cassettes are extremely high quality cassettes bought by specialist consumers and require a cassette recorder with a specific key-function to appreciate their true quality. A similar claim was submitted by an importer requesting the exclusion of audio cassettes for answering machines from the scope of the proceeding.
- (8) However, while the Commission accepts that there are minor differences in quality or use of audio cassettes, it considers that these are actually outweighed by the similarity of characteristics and functions which give them a high degree of interchangeability. The Commission notes in this respect that metal audio cassettes can be used on a

<sup>(1)</sup> OJ No L 209, 2. 8. 1988, p. 1.

<sup>(2)</sup> OJ No L 313, 13. 11. 1990, p. 5.

<sup>(3)</sup> OJ No L 65, 12. 3. 1991, p. 20.

cassette recorder without a specific key-function (giving thus a sound of a lower quality) and that cassettes for answering machines can be used on any other cassette recorder or player to record or play any sound. In these circumstances, the Commission concludes that metal audio cassettes and standard cassettes for answering machines should not be excluded from the scope of the proceeding.

- (9) The Council confirms the above conclusions and confirms that, by way of contrast, audio cassettes which do show important physical differences in size, components and use such as micro cassettes, small endless cassettes for answering machines, computer cassettes or digital audio tapes (DAT) cassettes are not covered by the scope of the present proceeding. In addition, the Council confirms the findings of the Commission with regard to the like product and the Community industry set out in recitals 15 and 16 (on the content of which there was no comment by the interested parties) of Regulation (EEC) No 3262/90.

#### D. NORMAL VALUE

- (10) For the purpose of definitive findings, normal value was, in general, established on the basis of the same methods as those used in the provisional determination of dumping, after taking into consideration new facts and arguments presented by the parties.

##### 1. Normal value based on prices in the exporting country

- (11) In recital 20 of Regulation (EEC) No 3262/90, the value of giveaway goods (e.g. index cards, photographs, ...) granted by two exporters was disallowed for the purpose of provisional findings as a deduction from domestic sales prices in establishing normal value. The exporters concerned have reacted to the Commission's provisional findings and have argued that the value of these giveaway goods should be treated as a discount and, as such, be deducted from the domestic selling price.

As previously stated in its provisional findings, the Commission considers that these giveaway goods, which, by their nature are unconnected with the product under consideration, do not have the effect of reducing the price of audio cassettes sold on the domestic market but are promotional expenses for which no deduction can be made in conformity

with Article 2 (3) (a) of Regulation (EEC) No 2423/88. This view is confirmed by the Council.

##### 2. Normal value based on constructed value

###### (a) Models grouped together in series

- (12) As explained in recital 22 of Regulation (EEC) No 3262/90, the Commission provisionally established normal value for one exporter on the basis of the weighted average price of series of models of audio cassettes. Subsequent investigation led the Commission to believe that this average price could not be relied upon to form accurate data for the establishment of normal value.
- (13) Since this subsequent investigation established that there were neither sufficient sales on the domestic market of audio cassette models suitable for direct comparison to those sold for export to the Community, nor sales at prices which permitted recovery of all costs reasonably allocated, normal value was determined on the basis of a constructed value of each model concerned. This constructed value was established on the same basis as that described in recital 23 of Regulation (EEC) No 3262/90.

###### (b) Original equipment manufacturer (OEM) sales

- (14) One exporter maintained its claim that there were no comparable prices, since it made no sales to OEM customers on the domestic market, whereas its export sales to the Community were made on an OEM basis; this exporter thus required that the Commission establish a constructed value including a reduced profit margin for the purpose of comparison with its export sales made on an OEM basis and submitted new facts to substantiate its request.

In view of this evidence, the Commission considers that the Community customers of this Korean exporter are buying on an OEM basis: indeed, they are purchasing audio cassettes made to their own specifications (which differ in some aspects from the Korean producer's own specifications) in order to supplement their own production and resell them while assuming the full responsibility of a manufacturer with regard to the product. In addition, the difference claimed was clearly reflected in the quantities sold and the pattern of price charged.

For the purpose of definitive determination, the Commission considers that, given the limited nature of the costs assumed by the importer (for instance absence of after sales service), the profit rate of the manufacturers' own brand sales used for

constructing normal value shall be reduced by 50 % : indeed this constitutes the difference which exists between own-brand and OEM profits if sales of the latter had taken place on the Korean market.

In the light of the Commission's considerations set out above, the Council confirms the Commission's findings and conclusions.

(c) *Profit*

- (15) As explained in recital 30 of Regulation (EEC) No 3262/90, where insufficient profitable sales took place on the domestic market, the addition of profit to be included in the constructed value was based on the weighted average profits realized by other exporters on profitable sales on the domestic market.
- (16) Two Hong Kong exporters contested the profit figure used by the Commission since, according to them, this figure was based on the profits achieved by a fully-integrated producer in Hong Kong, whereas they were not integrated and actually mainly involved in the assembling of audio cassettes. They alleged that a lower profit margin should thus be applied to reflect this difference.

In these circumstances, the Council considers it reasonable to base the profit figure for these Hong Kong exporters on the rate of profit determined for the manufacturing of a product in the same business sector, namely video cassettes, where these exporters performed similar activities (see Council Regulation (EEC) No 1768/89<sup>(1)</sup>).

#### E. EXPORT PRICE

- (17) The Council confirms the findings and conclusions of the Commission, as well as those set out in recitals 31 to 39 of Regulation (EEC) No 3262/90 on the content of which recitals there was no substantial comment by the interested parties.

#### F. COMPARISON

- (18) One exporter contested the amount of credit costs deducted from the domestic selling price for the establishment of normal value and claimed that it was lower than its actual expenses.

The Commission considers that the credit expenses claimed are partly related to sales of products other than audio cassettes and should thus be reduced to the proportion of sales of audio cassettes only, in accordance with Article 2 (11) of Regulation (EEC) No 2423/88.

#### G. DUMPING MARGIN

- (19) On comparing normal values for domestically sold models of the producers/exporters which were

investigated with the export prices of comparable models on a transaction-by-transaction basis, the final examination of the facts shows the existence of dumping in respect of audio cassettes in Japan, the Republic of Korea and Hong Kong on the part of eight exporters concerned, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

- (20) The weighted average margins, expressed as a percentage of cif frontier prices, varied according to the exporters as follows :

— Japanese exporters :

— Fuji	64,2 %
— TDK	48,2 %
— Maxell	47 %
— Denon Columbia	44,5 %

— Korean exporters :

— Goldstar	9,2 %
— Sunkyong Magnetics	2,6 %

— Hong Kong exporters :

— Yee Keung	2,4 %
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- (21) As far as Saehan Media, Sungnam, Keum Sahn Electronics (Korea), Tomei Magnetics, Swire, Magnetic Enterprise and Forward Electronics (Hong Kong) are concerned, no dumping was found.

- (22) For those exporters who did not make themselves known in the course of investigation, or cooperated only partly with the Commission, a dumping margin was determined on the basis of the facts available as explained in recitals 50 and 51 of Regulation (EEC) No 3262/90 and it is considered appropriate to use the highest dumping margin of 64,2 % for Japan, 9,2 % for Korea and 2,4 % for Hong Kong for these groups of exporters.

The Council confirms the above findings and conclusions.

#### H. INJURY

##### 1. Cumulation

- (23) In its provisional findings, the Commission considered that the effects of Japanese, Korean and Hong Kong imports had to be analysed cumulatively. The exporters reacted extensively to the Commission's provisional findings. They argued that the difference in consumer recognition, market segment and pricing pattern acknowledged in the provisional findings between Japanese and Korean exports should have led the Commission to rule out the cumulation of imports from Japan, Korea and Hong Kong for the purpose of assessing injury.

<sup>(1)</sup> OJ No L 174, 22. 6. 1989, p. 1.

- (24) The Commission confirms its finding set out in recital 78 of Regulation (EEC) No 3262/90 that, on the one hand, the Korean exporters compete to a very large extent on price alone, with products of comparatively standard technology and no significant difference in features and quality, while on the other hand, the Japanese exporters now tend also to concentrate on non-price elements, such as brand name, marketing features and styling as their main marketing strategy.

However, it is standard practice for the Community institutions to cumulate imports from several countries when these imported products and the like product of the Community industry meet the following criteria :

- they are interchangeable,
- they are sold or offered for sale in the same geographical markets,
- they have common or similar channels of distribution,
- they are simultaneously present in the market,
- the imports are not negligible as such.

- (25) The application of these criteria does not permit the establishment of a clear dividing line, separating audio cassettes either from Japan or from Korea. Indeed, besides the identity of the basic physical characteristics, application and use of audio cassettes whatever their source, there is, to a very large extent, commercial interchangeability and competition between the various models of audio cassettes ; this is shown by the fact that Japanese exporters are selling in the Community audio cassettes manufactured both in Japan and Korea, with no difference in the consumer's perception of these products by reason of their different sources.

In contrast, given the small amount of audio cassettes imported from Hong Kong which were found to be dumped, they had no discernible impact on the Community industry. Indeed, dumped imports from Hong Kong represented in 1988 a very small share of the Community market and their brand recognition was almost non-existent. Accordingly, since they did not make any contribution to material injury, imports from Hong Kong should not be cumulated.

The Council confirms the above findings and concludes therefore that the effects of Japanese and Korean imports have to be analysed cumulatively.

## 2. Effect on the dumped imports

- (26) The Commission concluded in its provisional findings that the Community industry had suffered material injury which manifested itself, in particular, by a loss of market share, price erosion, insufficient profitability and employment losses. It based this finding on the following facts :

- imports of audio cassettes from Japan and Korea have increased at a more rapid rate than the rate of Community consumption, from 149 million units in 1985 to 205 million units in 1988, i.e. by 38 %. Imports from Japan increased from 142 million units to 154 million units over this period, while imports from Korea increased from 7 million units to 51 million units,
- imports of audio cassettes from Hong Kong have increased from 4,9 million units in 1985 to 7 million units in 1988,
- the market share of the total dumped imports from Korea and Japan increased by 3 %, namely from 43,5 to 46,4 % from 1985 to 1988. As far as Hong Kong is concerned, its market share remained stable (1,5 % in 1985 ; 1,6 % in 1988),
- the complainant producer's selling prices in the Community suffered a significant erosion between 1985 and 1988,
- Community producers were unable to increase, significantly, their production between 1985 and 1988 and their sales fell by 8,5 % over this period, despite an increase in total consumption of 30 %,
- between 1985 and 1988 return on sales of the Community industry showed a constant negative trend. The slight improvement of its profit in 1988 appears to be the result of the withdrawal of loss-making models, which involves a further shrinking of its sales and presence on the market,
- cost-saving measures involved a decline of employment in the Community of some 23 % of the audio cassettes industry's workforce between 1985 and 1988,
- for a large number of transactions, large price undercutting was found on the part of Korean exporters and significant price undercutting on the part of Japanese exporters on the German market where the Community industry still retained a large market share.

- (27) No new facts concerning these findings were submitted to the Commission but the exporters concerned challenged injury findings on a number of points.
- (28) One exporter argued that the use of average figures for the whole of Community industry was misleading since they mask conflicting underlying trends by the two major Community producers which should have led to a separate determination of injury for each of them. The Council cannot accept this argument since, when determining whether material injury has been caused to the Community industry, this term must be interpreted in accordance with Article 4 (5) of Regulation (EEC) No 2423/88 as referring to the production of the Community producers as a whole.
- (29) One exporter also argued that one of the Community producers was not experiencing material injury and should have been excluded from the injury assessment owing to an alleged healthy profit situation. The Council cannot accept this view and recalls, as noted in recital 28, that the injury suffered by the Community industry is determined globally, on the basis of economic factors relating to its situation as a whole.

In addition, it notes that several factors concerning this Community producer were a clear indication of the existence of material injury, such as a profit rate which was in fact below the average, and a low global profitability achieved at the expense of withdrawing loss-making models from the market.

- (30) It was also argued that the Commission's findings with regard to production, capacity, utilization of capacity, and sales not only referred to production in the Community but also included audio cassettes manufactured by the Community industry in its overseas facilities, and sold in the Community.

As noted in the provisional findings of the Commission, this activity had completely ceased in 1988, which is a further indication of the existence of material injury. Indeed, while in 1985 the Community industry was operating at full capacity and thus decided, in order to meet the demand, to increase its capacity of production in the Community and simultaneously to supply the Community market with products manufactured in overseas facilities, the subsequent decrease of its sales in clear contrast with the buoyancy of the market led it to close these overseas facilities and to bear the costs of increasingly idle production facilities.

- (31) Another exporter argued that the Italian market should have been taken into account in the price

undercutting analysis since it was in Italy that it sold its most important volume of audio cassettes. However, it has to be noted that, as explained in recital 66 of Regulation (EEC) No 3262/90, the Commission selected three major Community markets covering more than 70 % of the Community sales which are the most representative of all sales of audio cassettes in the Community. The Commission found in contrast that the volume of sales and price patterns of the exporters and Community producers on other markets were not representative of the Community market as a whole.

- (32) The above conclusion, in addition to the findings of the Commission set out in Regulation (EEC) No 3262/90, lead the Council to consider that the Community industry is suffering material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

### 3. Causation of injury

#### (a) *Effect of dumped imports*

- (33) In its provisional findings, the Commission found that the increased influx of dumped imports coincided with a significant loss of market share and reduced profitability on the part of the Community industry, together with price erosion, and price undercutting of the audio cassettes produced by the Community industry. In particular, it was noted that the Community industry was in a dilemma since it had simultaneously to resist the dumped imports from Japan in the higher segment of the market, and the dumped imports from Korea in the lower segment of the market where competition is led mainly by price. As a result, the Commission concluded that dumped imports had, taken in isolation, caused material injury to the Community industry.

- (34) As far as Hong Kong imports are concerned, the Council considers that in view of the small amount of dumped imports from Hong Kong and of the absence of their brand recognition on the Community market, these could not have caused material injury to the Community industry.

- (35) As far as Japanese and Korean imports were concerned, several arguments were raised, mostly by Japanese exporters. These contested the provisional finding of the Commission and argued that their exports could not be held responsible for causing injury since the market share of their

exports decreased from 42 to 35 % between 1985 and 1988 and have been mainly replaced by products manufactured by their subsidiaries in the Community. According to these exporters, material injury could only be attributed to dumped imports from Korea, or to the effect of non-dumped sales in the Community which has been overlooked by the Commission, such as the sales of the audio cassettes manufactured by their production subsidiaries in the Community.

- (36) The Council cannot accept these arguments. If Japanese dumped exports were isolated from the other dumped exports, the arguments raised are not corroborated by the facts. Indeed, while there is a certain decrease of the market share of dumped exports from Japan, the Japanese exporters in 1988 retained a very large share of the Community market (35 %, which is almost double the Community industry's market share) and have increased in absolute terms their volume of dumped imports by 8 %.

In addition, as explained in recital 27, the Council considers that the effect of dumped imports from Japan and Korea should be analysed cumulatively. This analysis shows an increase in volume of the dumped imports by 38 % and in market share by 3 %.

*(b) Effects of other factors*

- (37) One exporter argued that the Commission did not consider in its provisional findings the effect of the audio cassettes manufactured by the Community industry and sold for export to third countries. The Commission notes that, between 1985 and 1988, while Community sales decreased from 94 million units to 86 million units, export sales of audio cassettes increased from 11 million units to 21 million units: however, this only shows that the Community industry has reacted in an efficient manner to the effect of dumping by developing new markets which were not affected by unfair competition. A further indication of injury is shown by the fact that the production of the Community industry, after deduction of the production destined for export, was actually declining over the period considered.
- (38) It was also argued that the injury suffered by one of the complainants was the result of a wrong commercial decision when it cut its prices in an attempt to sell at the lower end of the market.

The Council cannot accept this argument: the good performances achieved by this Community

producer in other sectors show that, in the absence of contrary proof, its commercial policy was adequate in so far as it decided to decrease its prices in an attempt to retain its market share against the pressure of the dumped imports.

- (39) In conclusion, the Council recognizes that other factors, including the sales of the production subsidiaries of the Japanese exporters, may have had some negative effects on the situation of the Community industry.

However, the injurious effects from the dumped imports have been considered and quantified separately from the effects of these other factors. Indeed, the loss of turnover for the Community industry can be quantified at approximately ECU 42 million; of this, around ECU 22 million can be attributed to dumped imports during the investigation period. Thus, injury cannot be allocated to the value of the Community production of the Japanese exporters which totals approximately ECU 17 million, or the non-dumped imports amounting to ECU 2 million.

Thus these factors do not detract from the fact that the dumped imports had a clear detrimental impact on the situation of the Community industry and that this impact, taken in isolation, has to be considered as material.

Indeed, given the facts described in recitals 30 to 32, the Council confirms the Commission's findings that the Community industry was unable to defend its price, brand image and volume of sales against the Japanese exporters: the latter were able to finance large sales expenditure thank to high profits on a domestic market without foreign competition and effect a large volume of sales resulting from dumping and thus were in a position to force down the prices of the Community industry in particular in its most important national market where significant price undercutting was found.

The Council also considers that the Community industry had to face the effect of dumped imports from Korea, and was not able to meet the low prices of these imports without definitively undermining its profit situation and jeopardizing any possibility of competition with the Japanese products in the higher segment of the market.

Therefore, the Council adopts the findings of the Commission pertaining to Korean and Japanese imports and concludes that these, taken in isolation, have caused material injury.

### I. COMMUNITY INTEREST

- (40) In its provisional findings, the Commission considered and weighed up the interests of the Community industry, of the consumers and of other industries and activities concerned. For the reasons given in recitals 95 to 104 of Regulation (EEC) No 3262/90, it concluded that the interests of the Community call, on balance, for granting protection to the Community industry against unfair competition due to dumped imports.
- (41) One exporter submitted that the withdrawal of one of the complainants, AGFA, from this sector in 1990, and the takeover of its activities by another complainant, BASF, would lead to cost-savings and rationalization which could not fail to improve the profit situation of the Community industry, and thus render protective measures unnecessary and contrary to Community interest.
- (42) The Council considers on the contrary that these facts strengthen the case for the adoption of protective measures in order to prevent other Community producers from disappearing.

Therefore, the Council confirms the Commission's findings that it is in the Community interest to impose anti-dumping measures to eliminate the injurious effects of imports originating in Japan and in Korea.

### J. DUTY

- (43) Several exporters contested the methodology applied by the Commission to determine the individual injury margin of each exporter. They argued that the effect of the determination of the price increase of the Community industry was to compensate for past loss of market share and not to eliminate present injury.

In addition, they alleged that this determination took no account of the other factors which may have contributed to the current unsatisfactory state of the Community industry.

The Commission cannot accept these arguments.

Firstly, the Commission recalls that the very purpose of the Community's anti-dumping legislation is to counteract dumping and material injury caused thereby. Consequently, the Community institutions are empowered to impose anti-dumping duties to the extent of the dumping found. There is, however, an additional responsibility on the institutions to avoid measures which can have excessive consequences. Indeed, Article 13 (3)

of Regulation (EEC) No 2423/88 states that the measures 'should be less' than the dumping margin 'if such lesser duties would be adequate to remove the injury'. This entails an assessment and a forecast of the future effects on the Community market of any anti-dumping measures which by its very nature is judgemental. This assessment, for which the legislation gives no guidance, has to be reasonable and take account of the particularities of each case.

In fulfilling this responsibility, the Commission considered that it is reasonable to assess, in this case, that the elimination of the full dumping margin for some exporters would probably be excessive since the consequent price increase would place them at too much of a disadvantage and possibly eliminate them from the market.

The Commission therefore concluded, given the serious injury inflicted on the Community industry over the years and its present weakened situation, that the minimum necessary for its recovery from the injurious effects of dumping would be to ensure that it is able to achieve a reasonable rate of profit in combination with a reasonable quantity of sales.

- (44) As far as this rate of profit is concerned, the Commission, in its preliminary findings, has established 12 % as reasonable.

One exporter contested the rate of the target profit of 12 % determined by the Commission, arguing that an audio cassette is a mature product which does not necessitate large research and development expenditure which has to be financed by profits. The Commission considers that, on the contrary, in view of the importance of the marketing and promotion expenditure on this Community market, and of the need for constantly upgrading the features and styling of audio cassettes to attract consumers, a rate of profit of 12 % is reasonable. This is supported by the fact that profits achieved by several of the exporters concerned on their domestic markets are far higher than this rate. This view is confirmed by the Council.

As far as a reasonable turnover is concerned the Commission considers it inappropriate, as explained in its preliminary findings, to take the turnover of the Community industry in the reference period (i.e. the year 1988) since this turnover was particularly heavily affected by the dumping practices found. Therefore, calculations of the necessary amounts of duty were based on the quantity of sales achieved by the Community industry in 1985, a year which is considered closer to a normal situation, notwithstanding the fact that the sales volume in that period may also have been

- adversely affected by dumped imports or other factors and that the market has evolved with the appearance of new suppliers.
- (45) Several exporters also contested the use of an adjustment of the injury margin of each exporter according to the relative volume of dumped imports of each exporter in relation to the others. It was argued that the comparative volume of dumped imports bears no relationship to the injury suffered by the Community industry, and that the adjustment was based on an arbitrary factor which does not reflect the real position of each exporter.
- (46) The Council cannot accept this view. Indeed, the volume of dumped imports has been identified as one of the critical factors of injury and it had thus to be taken into account when determining which duty, lower than the dumping margin, would be adequate to remove the injury in accordance with Article 13 (3) of Regulation (EEC) No 2423/88. In addition, the factor used for this adjustment, namely a variation of 20 % of the injury margin above and below the average according to the volume of exports of each exporter, far from being unreasonable has been determined by the Commission according to its injury findings (such as evolution of volume and market share of dumped imports and of the community industry) as a reasonable estimate of the effect of the volume of dumped imports on the injury suffered.
- (47) It was also submitted that this adjustment should be based on the volume of sales of dumped audio cassettes in the Community rather than the volume of dumped imports. The Council considers however that this adjustment can be based only on the volume of imports, since the volume of sales of these imports in the Community may vary during a period for inventory reasons, or because of transfers between subsidiaries, and thus not be representative of the injurious effect of the volume of dumped imports.
- (48) Finally, the Commission considers that, in order to establish the rate of the definitive duties to be imposed, the individual injury margins determined provisionally have to be expressed as a percentage of the cif value of the imports.
- (49) The Council confirms the above findings of the Commission, and concludes that on the basis of the injury calculation method described in recitals 105 to 109 of Regulation (EEC) No 3262/90 and for the abovementioned reasons, the duty to be imposed should be at the level of the dumping margin for all exporters mentioned in recital 21, except for the exporters whose dumping margins exceed the injury level and for which the following anti-dumping duties are required to eliminate the injury suffered :
- |                  |        |
|------------------|--------|
| — Fuji           | 15,2 % |
| — Denon Columbia | 18,7 % |
| — Maxell         | 21,8 % |
| — Sony           | 23,4 % |
| — TDK            | 25,5 % |
- (50) For other companies which neither replied to the Commission's questionnaire nor otherwise made themselves known or refused full access to information deemed to be necessary by the Commission for its verification of the company's records, the Council considers it appropriate to impose the highest duty calculated, i.e. 25,5 % for products originating in Japan and 9,2 % for products originating in Korea. Indeed, it would constitute a bonus for non-cooperation to hold that the duties for these producers/exporters were any lower than the highest anti-dumping duty determined.

#### K. COLLECTION OF PROVISIONAL DUTIES

- (51) In view of the dumping margins established, and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts collected by way of provisional anti-dumping duties should be definitively collected to the extent of the amount of the duty definitively imposed.
- (52) In respect of the exporters whose dumping did not cause material injury, the provisional duty collected has to be released entirely. Provisional anti-dumping duties collected or securities received for audio cassettes not covered by the definitive anti-dumping duties should also be released,

HAS ADOPTED THIS REGULATION :

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of audio tapes in cassettes falling within CN code ex 8523 11 00 (Taric code 8523 11 00\*10) and originating in Japan and the Republic of Korea.

To do this, for each exporter the weighted average selling price of its sales to the first unrelated buyer has been converted to the average cif value of these sales. The individual injury threshold was then expressed as a percentage of the weighted average resale price of each exporter at cif level. The result of this calculation is the price increase at the Community frontier necessary to remove the injury caused by each exporter.

2. The rate of the duty applicable to the net free-at-Community-frontier price before duty, is hereby set as follows :

(a) 25,5 % for audio tapes in cassettes originating in Japan (Taric additional code : 8487), with the exception of imports which are manufactured and sold for export to the Community by the following companies. These companies shall be subject to the rate of duty mentioned hereunder :

- Sony : 23,4 % (Taric additional code : 8483)
- Maxell : 21,8 % (Taric additional code : 8484)
- Denon : 18,7 % (Taric additional code : 8486)
- Fuji : 15,2 % (Taric additional code : 8485);

(b) 9,2 % for audio tapes in cassettes originating in the Republic of Korea (Taric additional code : 8488), with the exception of imports which are manufactured and sold for export to the Community by the following company. This company shall be subject to the rate of duty mentioned hereunder :

- Sunkyoung Magnetics Ltd (SKM) : 2,6 % (Taric additional code : 8489).

3. None of the duties shall apply to imports of the products specified in paragraph 1 manufactured and sold for export by the following Korean companies :

- Saehan Media Co., Seoul (Taric additional code : 8490),
- Sungnam Electronics Co. Ltd, Seoul (Taric additional code : 8490),
- Keum Sahn Electronics Co. Ltd, Kyung Do (Taric additional code : 8490).

4. For the purpose of this Regulation, audio tapes in cassettes mean audio cassettes of a length of 100 millimetres, a height of 64 millimetres and a depth of 12 millimetres and with a tolerance of approximately  $\pm 2$  millimetres.

5. In cases where the exporting company is not the same as the producing company the rate applicable to the producing company shall apply.

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

#### *Article 2*

The amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 3262/90 shall be definitively collected at the duty rate definitively imposed. Amounts secured in excess of the definitive rate of duty shall be released.

#### *Article 3*

The anti-dumping proceeding concerning imports of audio tapes in cassettes originating in Hong Kong shall be terminated. The amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 3262/90 shall be released.

#### *Article 4*

This Regulation shall enter into force on the day 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, 13 May 1991.

*For the Council*

*The President*

J. F. POOS