

**COMMISSION REGULATION (EC) No 534/94  
of 9 March 1994**

**imposing a provisional anti-dumping duty on imports of certain magnetic disks  
(3,5" microdisks) originating in Hong Kong and the Republic of Korea**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

After consultations within the Advisory Committee,

WHEREAS :

**A. PROCEDURE**

- (1) In September 1992, the Commission announced, by a notice published in the *Official Journal of the European Communities*<sup>(2)</sup>, the initiation of an anti-dumping proceeding concerning imports into the Community of certain magnetic disks (3,5" microdisks) originating in Hong Kong and the Republic of Korea, and commenced an investigation.

The proceeding was initiated as a result of a complaint lodged by the Committee of European Diskette Manufacturers (Diskma) on behalf of producers whose collective output of 3,5" microdisks was alleged to represent a major proportion of the Community production of these microdisks.

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

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

The Government of Hong Kong, a number of producers in the countries concerned and an importer in the Community related to a producer

in the Republic of Korea made their views known. All parties who so requested were granted a hearing.

- (3) The Commission sent questionnaires to parties known to be concerned and received detailed information from the complainant Community producer, certain producers in Hong Kong, one producer in the Republic of Korea, and one importer in the Community related to the Korean producer.
- (4) The Commission carried out investigations at the premises of the following firms :

(a) *Complainant Community producers :*

Belgium :

— Sentinel Computer Products Europe, NV, Wellen ;

France :

— RPS, Rhône-Poulenc Systems, Noisy-le-Grand ;

Germany :

— Boeder AG, Flörsheim am Main ;

Italy :

— Balteadisk SpA, Arnad,

— Computer Support Italy srl, Verderio inferiore ;

(b) *Hong Kong producers :*

— Jackin Magnetic Company Limited,

— Plantron (HK) Ltd,

— Swire Magnetics Holdings Limited,

— Technosource Industrial Ltd ;

(c) *Korean producer :*

— SKC Limited, Seoul ;

(d) *Related importer :*

— SKC Europe GmbH, Frankfurt am Main, Germany.

- (5) The investigation of dumping covered the period from 1 August 1991 to 31 July 1992 'the investigation period'.

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

<sup>(2)</sup> OJ No C 239, 18. 9. 1992, p. 4.

- (6) Owing to the volume and complexity of the data gathered and examined, the investigation has exceeded the normal time period of one year.
- (7) Following an anti-dumping proceeding on imports of certain magnetic disks (3,5" microdisks) originating in Japan, Taiwan and the People's Republic of China, hereafter referred to as the 'prior proceeding', definitive anti-dumping duties were imposed in October 1993 by Council Regulation (EEC) No 2861/93<sup>(1)</sup>.

#### B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

##### (i) Description of the product concerned

- (8) The product covered by the complaint, and for which the proceeding was opened, was 3,5" microdisks, used to record and store digital computer information (CN code ex 8523 20 90).
- (9) The microdisks concerned were available in various types, depending on their storage capacity and on the way in which they were marketed. However, no significant differences existed in the basic physical characteristics and technology of the various types of microdisk, all of which, in addition, showed a high degree of interchangeability.
- (10) In these circumstances, and in the light of the position adopted by the Council at recital (7) of Regulation (EEC) No 2861/93, all 3,5" microdisks should be considered as one product for the purposes of this proceeding, as they were in the prior proceeding.

##### (ii) Like product

- (11) The investigation showed that the various types of microdisks concerned sold on the domestic markets of Hong Kong and the Republic of Korea were alike to those exported from those two countries to the Community.
- (12) Similarly, the various types of microdisk manufactured in the Community and those exported to the Community from both the countries in question use the same basic technology and are alike in their essential physical characteristics and end-uses. They have, therefore, to be considered as a like product in accordance with Article 2 (12) of Regulation

(EEC) No 2423/88 (hereinafter referred to as 'the basic Regulation').

#### C. DUMPING

##### (i) Normal value

For both the exporting countries concerned, normal values were provisionally established for each type of the product concerned exported to the Community during the investigation period.

##### (a) *Hong Kong*

- (13) All four cooperating producers provided information on domestic sales and costs of production. None of these producers, however, had sufficient sales on the Hong Kong market (namely, less than 5 % of the quantities exported to the Community) to permit a proper comparison under Article 2 (3) (b) of the basic Regulation. Normal value was, therefore, constructed on the basis of the verified costs of manufacture of the producers concerned plus a reasonable amount for selling, general and administrative expenses and profit. Those last named items could not be established by reference to the cooperating producers, owing to the non-representative nature of their domestic sales of the product concerned, as indicated above, nor, for the same reason, by reference to sales by these companies in the same business sector. In those circumstances, therefore, the selling, general and administrative expenses of the only producer having sales on the Hong Kong market — albeit not in the same business sector — were considered to form the most reasonable basis for the determination of these expenses in Hong Kong, in accordance with Article 2 (3) (b) (ii) of the basic Regulation. As to profit, a margin of 10 % was indicated by reliable sources as reasonable for this type of product on the Hong Kong market. The Commission has, therefore, used this margin of 10 % as a basis for its provisional determination.

##### (b) *Republic of Korea*

- (14) For the only Korean producer who replied to the Commission's questionnaire, normal value was established, in accordance with Article 2 (3) (a) of the basic Regulation, on the basis of the price actually paid in the ordinary course of trade for domestic sales of the like product, which were made in sufficient quantities to permit a proper comparison.

<sup>(1)</sup> OJ No L 262, 21. 10. 1993, p. 4.

**(ii) Export price**

- (15) In the case of one producer in Hong Kong for whom the majority of sales were made to one own-equipment manufacturer (OEM) customer in the Community, the price actually charged reflected the fact that the assembled product contained components supplied, at no charge to the producer, by this OEM customer, and this price could not be considered the export price for the purposes of Article 2 (8) (b) of the basic Regulation.

In those circumstances, the Commission constructed the export price. To that end, it was considered reasonable to add to the price actually charged an amount to represent the cost and profit realizable on the component concerned.

For other producers in Hong Kong, and for sales by the cooperating producer in the Republic of Korea to unrelated importers in the Community, export prices, for the purposes of provisional findings, were established on the basis of the prices actually paid or payable for the products sold for export to the Community.

- (16) In the case of sales made by the cooperating producer in the Republic of Korea to its related importers in the Community, export prices were constructed, in accordance with Article 2 (8) (b) of the basic Regulation, on the basis of the price at which the imported product was first resold to an independent buyer in the Community. In constructing these export prices, allowances were made for all costs incurred between importation and resale and for a profit margin of 5 %, which is provisionally considered to be reasonable on the basis of the profits made by independent importers in the electronics sector.

**(iii) Comparison**

- (17) Normal value, by product type, was compared with the export price for the corresponding type, transaction by transaction, at the same level of trade, and on an ex-works basis. For the purposes of a fair comparison, adjustments were made, in accordance with Article 2 (9) and (10) of the basic Regulation, in respect of differences in physical characteristics and selling expenses for which satisfactory evidence was submitted.
- (18) The Korean producer claimed an adjustment for physical characteristics relating to formatted micro-

disks exported to the Community. The amount of increase proposed by this producer represented only the cost of the formatting process, without reference to its effect on the market value of the product concerned.

The Commission's view is that this adjustment should be calculated on the basis of the significant effect of this process on market prices, and normal value has, therefore, been adjusted accordingly.

The same exporter claimed adjustments for credit costs on the open account basis.

The Commission considers that the adjustment for credit costs should relate only to the conditions and terms of sale of the individual transaction, and, as such, should be determined on the basis of that sale. Claims under this heading were, therefore, only allowed up to the maximum permitted by the terms of the sales transactions in question.

Claims by this same producer for adjustment to normal value in respect of selling expenses not covered by Article 2 (10) of the basic Regulation, namely promotion and brand expenses, were disallowed.

**(iv) Dumping margins**

- (19) The comparison showed the existence of dumping, the dumping margins being equal to the amount by which the normal value, as established, exceeds the price for export to the Community.
- (20) The weighted average dumping margins for each producer, expressed as a percentage of the free-at-Community-frontier price are as follows:

*Hong Kong*

— Jackin Magnetic Company Limited :	7,2,
— Plantron (HK) Ltd :	6,7,
— Swire Magnetic Holdings Limited :	22,2,
— Technosource Industrial Ltd :	20,1 ;

*Republic of Korea*

— SKC Limited :	8,2.
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- (21) For those producers in the countries concerned which neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping margin was determined on the basis of the facts available in accordance with Article 7 (7) (b) of the basic Regulation.

- (22) As far as Korea is concerned, it was considered that, since almost all imports into the Community originating in Korea were produced by the cooperating producer in that country, the finding made with regard to this producer provided the most appropriate basis for the determination of the dumping margin.

The Commission considers, therefore, that it would have provided a bonus for non-cooperation, and may lead to the circumvention of anti-dumping measures, should any of the producers concerned be deemed to have dumped at a level lower than that found for the producer in the Republic of Korea which had cooperated.

- (23) Regarding Hong Kong, the Commission has noted that the exports reported by the cooperating producers accounted for approximately 26 % of total imports into the Community of the product concerned originating in Hong Kong.

In the light of the low level of exports covered by the investigation and the seriousness of the non-cooperation on the part of Hong Kong producers, the Commission considered, that the highest dumping margin found for a cooperating producer could not provide an appropriate basis for the dumping margin for non-cooperating producers.

This was considered necessary in order not to provide an unacceptable bonus for non-cooperation or to discriminate against those producers in Hong Kong which cooperated. The low level of cooperation in this case leads the Commission to believe that the companies with the higher dumping margins have deliberately chosen not to cooperate. In view of the lack of reliable information from other sources, and the need to ensure that the measures introduced constitute effective protection for the Community from unfair trade, it was considered appropriate, for provisional determination, to establish the dumping margin for non-cooperating producers in Hong Kong, in accordance with the provisions of Article 7 (7) (b) of the basic Regulation, at the dumping margin alleged for that country by the complainants, namely 35,7 %. The results of the investigation, in particular those concerning the establishment of normal value, generally appear to confirm the reliability of the

allegations of the complaint on the dumping margin.

#### D. COMMUNITY INDUSTRY

- (24) In examining whether the complainants constitute a major proportion of the total Community production of the like product, the Commission, as it had done in the prior proceeding on imports of the like product, requested and obtained information from all producers in the Community.

The Commission also had to take into consideration the fact that some of the producers in the Community are related to producers in Japan, Taiwan and the People's Republic of China found to be dumping and causing material injury thereby, under Regulation (EEC) No 2861/93, and that other producers in the Community without such relationships themselves imported the dumped product.

- (25) The cooperating producer in the Republic of Korea argued that the complainant industry lacked the standing to submit the complaint on behalf of the Community industry, as is required by Article 5 (1) of the basic Regulation, on the grounds that no account had been taken by Diskma of the production in the Community of Japanese-affiliated producers. As the proceeding in question concerned 3,5" microdisks originating in Hong Kong and the Republic of Korea, it was not open to the Commission to exclude those Japanese-related companies from the 'Community industry' within the meaning of the first indent of Article 4 (5) of the basic Regulation.

- (26) The situation of producers in the Community which were affiliated to Japanese producers was examined in the prior proceeding, where the Council found, in recital (20) of Regulation (EEC) No 2861/93, that it was only by excluding such producers which have participated in injurious dumping that the Community Institutions can obtain an objective and undistorted view of the effects of dumped imports. As a consequence, the assessment of the effects of the dumped imports originating in Hong Kong and the Republic of Korea would be equally distorted if those producers already found to be dumping the like product, and causing material injury to the same complainant, were not excluded from the definition of the Community industry.

- (27) Some of the complainant producers imported the product under investigation from producers for which dumping has been established. However, the level of imports during the investigation period was limited to that necessary to maintain sales by the complainant producers concerned while their own output was temporarily insufficient, at a time of rapid market growth. Failure to keep pace with market developments at such a time would have had severely damaging consequences for their continued presence on the Community market. These producers, therefore, were neither shielded from the effects of dumping nor benefited from it.

In the light of the above, it was considered that there were no grounds for the exclusion of any of the complainant producers from the definition of the Community industry.

- (28) In the course of its investigation, the Commission found that one of the complainant companies, Balteadisk, was unable to substantiate satisfactorily the information provided to the Commission in its questionnaire response regarding its levels of production and prices. The Commission, therefore, has provisionally excluded the information so provided by the company; as a consequence, the information supplied by Balteadisk has been disregarded.
- (29) On the basis of the above considerations, the share of the total Community production of the product concerned held by the complainant producers during the investigation period amounted to approximately 72 %, which is a major proportion of total Community production.

#### E. INJURY

It will be recalled that the Council, in Regulation (EEC) No 2861/93, found that the Community industry was suffering material injury from the effects of the dumped imports from Japan, Taiwan and the People's Republic of China. In the present proceeding, the Commission examined whether the dumped imports of the like product from Hong Kong and the Republic of Korea also contributed to the material injury to the Community industry.

##### (i) Cumulation of the effects of the dumped imports

- (30) In establishing the impact of the dumped imports from Hong Kong and the Republic of Korea on

the Community industry, the Commission has considered the effect of all dumped imports from both countries. In analyzing whether cumulation of these imports is appropriate, the Commission has considered the comparability of the product imported from the countries concerned in terms of the following criteria: similarity of physical characteristics, interchangeability of end-uses, scale of the volumes imported, simultaneous competition on the Community market and with the like product manufactured by the Community industry, and similarity of channels of distribution and price behaviour in the Community market of the producers in the countries concerned.

- (31) The cooperating producer in the Republic of Korea argued that imports of 3,5" microdisks from that country should not be cumulated with imports from Hong Kong, as the share of the Community market taken up by imports from Korea is too small to be a contributory factor to material injury. It was further argued that this market share has been decreasing constantly over the last four years, unlike that of Hong Kong which has greatly increased.
- (32) The Commission has examined these claims. As to the size of the market share held by imports from the Republic of Korea during the investigation period, this was found to equal 2,4 %. Regarding changes in market shares, developments were indeed different, with Hong Kong's share of Community apparent consumption rising from 6,0 % in 1989 to 11,8 % in the investigation period. The Republic of Korea's share, on the other hand, was stable, at 2,5 % in 1989 and 2,4 % in the investigation period. At this percentage, however, Korea's share is above the level that can be considered *de minimis*. The arguments of the producer concerned in the Republic of Korea have, therefore, to be rejected.
- (33) After examination of the facts, it was found that the 3,5" microdisks imported from both the countries concerned were, on a type-by-type basis, alike in all respects, interchangeable and marketed in the Community within a comparable period and under similar commercial policies. These imports competed with each other and with the like product manufactured by the Community industry. It was also found that there was no clear distinction in the price behaviour in the Community of the producers in the countries concerned. In addition, the volumes of the dumped imports from either of the countries could not be considered negligible.

- (34) In those circumstances, and in accordance with the standard practice of the Community Institutions, it was considered that there are sufficient grounds to cumulate the imports from both the countries concerned.

**(ii) Community consumption, volume and market share of the dumped imports**

- (35) The Commission has relied on the methodology adopted in the prior proceeding.

On this basis, Community consumption was 295 million units in 1989, 398 million in 1990, 582 million in 1991 and 656 million in the investigation period, i.e. growth of 122 % between 1989 and the investigation period. The volume of dumped imports into the Community of the product concerned originating in Hong Kong and the Republic of Korea was 25 million units in 1989, 37 million in 1990, 79 million in 1991 and 94 million in the investigation period — that is, an increase in dumped imports of 276 % between 1989 and the investigation period.

- (36) The developments of these imports, assessed in the light of Community apparent consumption, led to a combined share of the Community market held by Hong Kong and the Republic of Korea of 8,5 % in 1989, 9,4 % in 1990, 13,6 % in 1991 and 14,2 % in the investigation period.

**(iii) Prices of dumped imports**

- (37) The prices charged by the producers investigated in Hong Kong and the Republic of Korea were, during the investigation period, significantly below the prices charged by the Community industry. Price undercutting was established, for each of the producers investigated in the countries concerned, by comparing their prices for sales to the first independent customer in the Community with the weighted average prices of the Community industry. In general, the comparison was made for the markets of France, Germany, Italy and the United Kingdom, which together represent most of the Community market for the product concerned, and to which the majority of the dumped imports in question were delivered.

The comparison was made separately for each of the product-types imported which were considered for the dumping determination. Adjustments were

also made in respect of customs duty and the importer's profit margin mentioned in recital (16).

The result of the comparison showed margins of price undercutting for all the producers investigated. The weighted average undercutting ranged from 8,1 % to 25,3 % for Hong Kong, and was 19,7 % for the Republic of Korea.

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

*(a) Production and capacity utilization*

- (38) The volume of production of the product concerned by the Community industry increased from 31 million units in 1989, to 48 million in 1990, 69 million in 1991 and to 87 million in the investigation period — an absolute increase of 180 % over the period from 1989. Capacity utilization rates went from 49 % in 1989 to 60 % in 1990, 76 % in 1991 and to around 84 % in the investigation period.

*(b) Sales and market shares*

- (39) While the Community industry's share of the Community market grew by 2,5 percentage points between 1989 and the investigation period, this growth was below the level that could normally have been expected from a relatively young industry at a time when apparent consumption on its domestic market rose by 122 % over the same period.

*(c) Prices*

- (40) Complainant Community producers' prices fell overall by 29 % between 1989 and the investigation period. In general, the level of prices charged by the Community industry in that period, in its effort to achieve reasonable levels of capacity utilization and market share, did not permit a reasonable level of profit to be made, and, on average, did not cover production costs.

*(d) Profitability*

- (41) The development of prices and production costs resulted in losses from 1989 for the majority of the Community producers concerned. These losses on turnover in the Community amounted, on average, to more than 6 % for the Community industry. In addition, in some cases, return on sales was insufficient to recover the costs of investments already incurred, and to support the further investment necessary to ensure a continued presence in this rapidly evolving, high-technology sector.

*(e) Investments*

- (42) The development of investment by the Community industry in 3,5" microdisk production capacity has been as follows: between 1989 and 1990, an increase of 29 %; 1990 to 1991, 14 %; 1991 to investigation period 14 %. The slowdown in the annual rate of investment, even though the market was showing growth of more than 30 % over the period, is clear, as is the reluctance of Community producers to increase investments in line with market growth in the face of unfair competition from dumped imports.

*(v) Conclusions on injury*

- (43) In the light of the remarks in the introduction to this section on injury, and the foregoing analysis, the Commission provisionally concludes that the Community industry is suffering material injury.

In its essentials, the situation remains as it was set out in recital (62) of Commission Regulation (EEC) No 920/93 imposing a provisional anti-dumping duty in the prior proceeding<sup>(1)</sup>. Although certain quantitative indicators, such as production, sales and capacity utilization showed positive development, due in large measure to the expansion of the market, they remained below the levels necessary for the generation of profits adequate to finance the investments needed to allow the Community industry to keep pace with the swiftly changing conditions evident in the area of communications technology. Indeed, despite the expanding consumption prevailing in the market, the Community industry's prices fell by around 30 % over the period examined.

**F. CAUSATION OF INJURY**

- (44) The Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports from Hong Kong and the Republic of Korea, and whether other factors may have caused or contributed to that injury.

**(i) Effect of the dumped imports from Hong Kong and the Republic of Korea**

- (45) In its examination, the Commission found that the increasing volume and growing market share of the

dumped imports from the countries concerned by the present proceeding coincided in time with the precarious financial situation of the Community industry. As far as the prices of the dumped imports were concerned, substantial margins of undercutting were found. These could not have failed to have had very negative consequences for the Community industry. Indeed, as pointed out in the prior proceeding, the market for 3,5" microdisks is transparent, with a high price elasticity of demand. There are many suppliers, many price-sensitive consumers and market information is good. As a result, the Community industry has had to reduce its prices in an attempt to capture a viable share of the Community market with a level of production that allows the economic employment of resources. The depression of prices has also led to the general lack of profitability referred to in recital (41) above.

**(ii) Effects of other factors**

- (46) The Commission considered whether factors other than dumped imports from the countries concerned might have caused, or contributed to, the injury suffered by the Community industry. In particular, the Commission examined the imports from countries not covered by this proceeding, and the possibility that injury may have been self-inflicted through the import of low-priced 3,5" microdisks by the Community industry.
- (47) The cooperating producer in the Republic of Korea contended, first, that imports of the like product from Korea could not have caused material injury as the market share held by these imports was negligible; secondly, it was claimed that any injury was due to imports from countries other than the Republic of Korea; finally, the decline in Community producers' prices was attributable to the import and sale of low-priced 3,5" microdisks by the Community industry.
- (48) As to the allegedly negligible share of the Community market held by the Republic of Korea, this was examined at recital (32) above and found to be above a level that could be considered negligible.

As regards imports from countries other than those concerned by this proceeding, the Council has already determined that imports of the like product from Japan, Taiwan and the People's Republic of China were dumped and had caused material injury to the Community industry, as stated at recital (7) above.

<sup>(1)</sup> OJ No L 95, 21. 4. 1993, p. 5.

As to other countries, their share of the Community market remained generally stable over the period considered. As to the level of prices of these imports, no conclusions can be drawn from the information made available to the Commission during the preliminary investigation.

Even if it were assumed, however, that imports from countries other than those subject to this proceeding and the prior proceeding had caused some injury to the Community industry, this would not alter the fact that the injury caused by the dumped imports concerned by this proceeding, in isolation, is material.

(49) As to the contention that the decline in prices on the Community market was due to the import and sale by the Community industry of low-priced 3,5" microdisks, the Commission's investigation showed that these imports were made in order to defend a competitive position in the Community and maintain market share. Further, the prices at which the imported product was sold by the Community producer concerned were the same as the sales prices of its own-produced 3,5" microdisks.

(50) In those circumstances, the Commission concludes for the purposes of provisional findings, that, notwithstanding the injury found to have been caused by dumped imports from Japan, Taiwan and the People's Republic of China, the dumped imports from Hong Kong and the Republic of Korea, because of their low prices, their share of the Community market, and the resulting lack of profitability of the Community industry, have, in isolation, caused material injury to this industry.

#### G. COMMUNITY INTEREST

(51) In assessing the Community interest, the Commission has to take account of two basic elements. The first is that putting an end to distortions of competition arising from unfair commercial practices, and thus re-establishing open and fair competition on the Community market, is the very purpose of anti-dumping measures, and is fundamentally in the general interest of the Community. Secondly, failure to take provisional measures in the present proceeding would aggravate the already precarious situation of the Community industry, marked by a lack of profitability and a consequential slowing of

investment. This has put the continued existence of this industry at considerable risk. Should this industry be forced to cease production, the Community would become almost wholly dependent on third-country sources of supply in a rapidly developing area of increasing technological significance. Further, this could entail serious consequences for Community manufacturers of components for 3,5" microdisks.

(52) The cooperating producer in the Republic of Korea has argued that the imposition of anti-dumping measures was not likely to improve the future health of the Community industry, and would only serve to increase costs to the consumer. Further, it is contended that, as Community production capacity is limited and Community manufacturers themselves need to import from Asian sources to service their customer base, the introduction of duties would reduce supply and drive up prices. Relief for the Community industry would be short-term only, while the software industry would be seriously damaged.

(53) The Commission examined those contentions.

As to the interests of consumers and the software industry, any short-term price advantages have to be weighed against the longer-term effects of not restoring fair competition. Indeed, to refrain from taking action would seriously threaten the viability of the Community industry, the disappearance of which would, in fact, reduce supply and competition, to the detriment of consumers and the software houses.

Further, while it is true that production in the Community is currently insufficient to meet demand for the product concerned anti-dumping measures merely remove the distortion of competition arising from dumping and are not, therefore, an obstacle to filling the gap in demand with supplies from third countries at fair prices. Indeed, where the level of the anti-dumping measures is equal to the dumping margin, but lower than the amount required to fully remove the injury, it is only the unfair element of the exporters' price advantage that is eliminated. In those circumstances, exports can still compete on the basis of their true comparative advantage and exporters, therefore, will be unlikely to experience diminished access to the Community market.

- (54) In addition, since anti-dumping duties have already been imposed on imports of the like product from Japan, Taiwan and the People's Republic of China, Community interest requires that, in order to avoid discrimination between countries found to have been dumping and causing material injury, protective measures be introduced, in the interests of equity, with regard to imports of the dumped 3,5" microdisks subject to this proceeding.
- (55) After consideration of the various interests involved, it is provisionally concluded that the adoption of measures in the present case will re-establish fair competition by eliminating the injurious effects of dumping practices, and will afford the Community industry the opportunity of maintaining and developing this essential technology. In addition, certain safeguards will be offered to the component supply industry in the Community.
- (56) The Commission finds, therefore, that it is in the Community interest to adopt anti-dumping measures, in the form of provisional duties, in order to prevent further injury being caused by the dumped imports concerned during the proceeding.

#### H. DUTY

- (57) For the purpose of establishing the level of the provisional duty, the Commission took account of the dumping margins found and of the amount of duty necessary to eliminate the injury sustained by the Community industry.
- (58) Since the injury consists principally of price depression, suppression of market share and, in particular, lack of profitability or losses, the removal of such injury requires that the industry shall be put in the position where prices can be increased to profitable levels without loss of sales volume. In order to achieve this, the prices of the imports concerned originating in Hong Kong and the Republic of Korea should be increased accordingly.

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

- (59) To that end, the Commission has used the production costs of the complainant industry, together with an amount for profit for which account was taken of the fact that the Community industry, being at a relatively early stage of development, requires a profit margin of 12 % on turnover to

provide the amount of profit needed to ensure the viability of the Community industry.

The actual weighted average selling prices charged during the investigation period by the Community industry were increased for each product type, where appropriate, in order to achieve the overall minimum amount of profit required. The resultant prices thus established were compared with the prices of the dumped imports used to establish undercutting as outlined in recital (37).

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

- (60) In establishing the level of duty for producers in the Republic of Korea who neither replied to the Commission's questionnaire nor otherwise made themselves known, the Commission considers it appropriate, for the reasons concerning the dumping margin outlined in recital (22), to use the findings of the investigation as a basis and to apply the level of duty determined for the producer investigated.

As for producers in Hong Kong who neither replied to the Commission's questionnaire nor otherwise made themselves known, the Commission considers it appropriate, for the reasons outlined in recital (23) to establish the level of provisional duty at the highest dumping margin alleged by the complainant, namely 35,7 %.

- (61) In the interests of sound administration, a period should be fixed within which the parties concerned may make their views known and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose 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 3,5" microdisks used to record and store encoded digital computer information falling within CN code ex 8523 20 90 (Taric Code 8523 2090\*10), and originating in Hong Kong and the Republic of Korea.
2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows :

Country	Products manufactured by	Rate of duty %	Taric additional code
Hong Kong	Jackin Magnetic Co., Ltd	7,2	8775
	Plantron HK Ltd	6,7	8776
	Swire Magnetic Holdings Ltd	22,2	8777
	Technosource Industrial Ltd	20,1	8778
	Other companies	35,7	8779
Republic of Korea	SKC Limited	8,2	8780
	Other companies	8,2	8781

3. 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) of Regulation (EEC) No 2423/88, 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*.

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

Done at Brussels, 9 March 1994.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*