

COMMISSION REGULATION (EC) No 2426/95

of 16 October 1995

imposing a provisional anti-dumping duty on imports of certain magnetic disks
(3,5" microdisks) originating in the United States, Mexico and Malaysia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community⁽¹⁾, as last amended by Regulation (EC) No 1251/95⁽²⁾, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas :

A. PROCEDURE

- (1) In September 1994, the Commission announced, by a notice published in the *Official Journal of the European Communities*⁽³⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of certain magnetic disks (3,5" microdisks) originating in the United States, Mexico and Malaysia, 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 represented a major proportion of 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 complainant, and gave the parties concerned the opportunity to make their views known in writing and to request a hearing.

A number of producers in the countries concerned and importers in the Community 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 infor-

mation from the complainant Community producers, certain producers in the United States, Mexico and Malaysia and those importers in the Community related to producers in the countries concerned.

- (4) The Commission carried out investigations at the premises of the following firms:

(a) Complainant Community producers:

- Belgium :
 - Sentinel Computer Products Europe, NV, Wellen,
 - Supply House BVBA, Wellen ;
- France :
 - R.P.S. Media SA, Albi,
 - R.P.S. International SA, Noisy-le-Grand,
 - Sentinel France, Boulogne ;
- Germany :
 - Boeder AG, Flörsheim am Main ;
- Italy :
 - Computer Support Italy srl, Verderio Inferiore ;

(b) American producers:

- TDK Electronics Corporation, Port Washington,
- 3M, Minneapolis,
- Verbatim, Charlotte ;

(c) Mexican producer:

- Industria Fotográfica Interamericana SA, Guadalajara ;

(d) Malaysian producers:

- Disccomp Magnetics Ltd, Kuala Lumpur,
- Mega High Tech Ltd, Penang ;

(e) Related importers:

- France :
 - 3M France, Cergy-Pontoise,
 - Verbatim France SARL, Rueil ;
- Germany :
 - 3M Deutschland GmbH, Neuss,
 - Disccomp Magnetics GmbH, Stutensee,
 - Verbatim GmbH, Eschborn,
 - TDK Electronics Europe GmbH, Ratingen ;

⁽¹⁾ OJ No L 349, 31. 12. 1994, p. 1.

⁽²⁾ OJ No L 122, 2. 6. 1995, p. 1.

⁽³⁾ OJ No C 246, 2. 9. 1994, p. 4.

- Ireland :
 - Verbatim Ltd, SA, Limerick ;
 - Italy :
 - 3M Italia SpA, Milano,
 - Verbatim Italia SpA, Milano,
 - TDK Italia SpA, Milano ;
 - Luxembourg :
 - TDK Recording Media Europe SA ;
 - Netherlands :
 - 3M Distribution Services International (DSI) BV, Breda,
 - 3M Nederland, Leiden ;
 - Spain :
 - Verbatim España SA, Barcelona ;
 - United Kingdom :
 - Verbatim Ltd, Egham,
 - TDK UK Ltd, Redhill,
 - 3M UK plc, Bracknell.
- (5) The investigation of dumping covered the period from 1 August 1993 to 31 July 1994, 'the investigation period'.
- (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 two prior anti-dumping proceedings on imports of certain magnetic disks (3,5" microdisks) originating in Japan, Taiwan and the People's Republic of China, and originating in Hong Kong and the Republic of Korea, hereinafter referred to as 'the prior proceedings', definitive anti-dumping duties were imposed in October 1993 by Council Regulation (EEC) No 2861/93 ⁽¹⁾, and in September 1994 by Regulation (EC) No 2199/94 ⁽²⁾ respectively.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. 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 line with the position previously adopted by the Council, all 3,5" microdisks should be considered as one product for the purposes of this proceeding.

2. Like product

- (11) The investigation showed that the various types of microdisks concerned sold on the domestic markets in the United States, Mexico and Malaysia were alike to those exported from those countries to the Community.
- (12) Similarly, the various types of microdisks manufactured in the Community and those exported to the Community from 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 1 (4) of Regulation (EC) No 3283/94 (hereinafter referred to as 'the Basic Regulation').

C. DUMPING

1. United States, Mexico

- (13) The Commission found it unnecessary to establish whether dumping by the cooperating producers in the United States and Mexico existed, since the injury margins established for these producers, as described in recital (53), were found to be *de minimis*.

2. Malaysia

(a) Normal value

- (14) For one cooperating producer, normal value was established, in accordance with Article 2 (1) 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.
- (15) The other cooperating producer had insufficient sales on the Malaysian market (that is, less than 5 % of the quantities exported to the Community) to permit a proper comparison under Article 2 (2) of the Basic Regulation. Normal value was, therefore, calculated on the basis of the verified costs of

⁽¹⁾ OJ No L 262, 21. 10. 1993, p. 4.

⁽²⁾ OJ No L 236, 10. 9. 1994, p. 2.

production of the producer concerned plus a reasonable amount for selling, general and administrative expenses and profit. This amount was established by reference to the expenses incurred and the profit realized by the other cooperating producer for domestic sales of the like product in the ordinary course of trade.

(b) Export price

- (16) Export price was generally established on the basis of the price actually paid or payable for the product concerned when sold for export to the Community.

- (17) In the case of sales made by one cooperating producer in Malaysia to its related importer in the Community, export prices were constructed, in accordance with Article 2 (9) 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 the export prices, adjustments 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 this sector.

(c) Comparison

- (18) The weighted-average normal value, by product type, was compared with the weighted-average export price for the corresponding type at the same level of trade and on an ex-works basis. For the purposes of a fair comparison, adjustment were made, in accordance with Article 2 (10) of the Basic Regulation, in respect of differences in factors which were claimed, and demonstrated, to affect prices and therefore price comparability.
- (19) Claims by one producer for adjustment to normal value in respect of differences in selling expenses, namely promotion and brand expenses, were disallowed, since it was not demonstrated that the alleged differences affected price comparability.
- (20) One producer claimed an adjustment for differences in levels of trade arising from the fact that part of its export sales were on an OEM basis while its domestic sales were at a different level of trade. When examining this claim, the Commission found that the adjustment could be granted, since the OEM export sales were made to a company involved in manufacturing, and the export price levels for the transactions concerned were significantly and consistently below own-brand export

sales at the nearest level of trade. These preliminary tests being met, and as normal value had to be constructed for this producer given the non-representative nature of its domestic sales, the Commission made an adjustment to normal value in respect of OEM sales, based on the addition to its costs of production of the selling, general administrative expenses incurred and the profit realized by the other cooperating producer on domestic sales made at a level of trade equivalent to that of OEM sales, which were found to be made at prices significantly and consistently lower than prices of own-brand domestic sales.

3. Dumping margins

(a) Cooperating producers

- (21) As far as the cooperating producers in the United States and Mexico are concerned, no dumping margins were established for the reasons outlined in recital (13).
- (22) As far as the cooperating producers in Malaysia are concerned, the comparison shows 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. The weighted average dumping margins for each producer expressed as a percentage of the free-at-Community-frontier price are as follows:

Mega High Tech : 26,8 %

Discomp : 46,4 %.

(b) Non-cooperating producers

- (23) 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 18 of the Basic Regulation.
- (24) The Commission noted in particular that the exports reported by the cooperating producers accounted for approximately 60 % of total imports into the Community of the product concerned originating in the United States. 35 % in the case of Mexico and 68 % in the case of Malaysia. Furthermore, the level of export prices for transactions by non-cooperating producers was found, on the basis of information derived from Eurostat, to be greatly below the prices charged by the exporters having cooperated with the investigation and, when compared to those of the Community industry, showed large undercutting margins.

In the light of the substantial level of exports not covered by the investigation and the seriousness of the non-cooperation on the part of the producers concerned, the Commission considered it essential neither to provide a bonus for non-cooperation nor to discriminate against those producers which had cooperated. 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 industry from unfair trade, it was considered appropriate, for the provisional determination, to establish the dumping margin for non-cooperating producers at either the highest dumping margin found during the investigation for a producer in Malaysia, or the dumping margin alleged for those countries by the complainant, whichever was the higher. On this basis, the provisional dumping margins applicable to non-cooperating producers has been established at 44 % for the United States and Mexico and 46,4 % for Malaysia. The results of the investigation generally appear to confirm the reliability of the allegations of the complaint on the magnitude of these dumping margins.

D. COMMUNITY INDUSTRY

- (25) Information was sought from all known producers of the product concerned in the Community. The Commission also took into consideration, as it had done in the prior proceedings, the fact that some of the producers in the Community were related to producers in the countries concerned by those prior proceedings, and were found to be dumping and causing material injury thereby.
- (26) As in the prior proceedings, the Commission found that the assessment of the effects of the dumped imports originating in the United States, Malaysia and Mexico would be distorted if Community producers related to those producers found to be dumping the like product, and causing material injury to the complainant, were not excluded from the definition of the 'Community industry'.
- (27) In the course of its investigation, the Commission found that one of the complainant companies, Datarex, was unable to provide the information sought by the Commission to substantiate the injury. The Commission, therefore, has excluded this company from the definition of the 'the Community industry' for the purpose of its injury determination.
- (28) On the basis of the above consideration, the share of the total Community production held by the complainant producers during the investigation period amounted to at least 90 %. It is confirmed, therefore, that the complainant represented a major

proportion of total Community production of the product concerned.

E. INJURY

- (29) It has to be noted that the Council, in Regulations (EEC) No 2861/93 and (EC) No 2199/94, found that the Community industry was suffering material injury from the effects of the dumped imports from Japan, Taiwan, the People's Republic of China, Hong Kong and the Republic of Korea. In the present proceeding, the Commission examined whether the dumped imports of the like product from the United States, Mexico and Malaysia also contributed to the material injury to the Community industry.

1. Cumulation of the effects of the dumped imports

- (30) In establishing the impact of the dumped imports from the United States, Malaysia and Mexico on the Community industry, the Commission has considered the effect of all dumped imports from the countries concerned. In analysing whether cumulation of these imports is appropriate, pursuant to Article 3 (4) of the Basic Regulation, the Commission has considered the fact that the margin of dumping established in relation to the imports from each country was very much more than *de minimis* (44 %, 46,4 % and 44 % respectively), and that the volume of imports from each country is not negligible in the meaning of Article 5 (7) of the Basic Regulation, (their respective market shares attaining 19,1 %, 5,4 %, and 2,3 %). In addition, the Commission has examined the conditions of competition between imported products, and between imported products and the like Community product on the basis of the following criteria: similarity of physical characteristics, interchangeability of end-uses, scale of the volumes imported, and competition on the Community market simultaneous 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) After examination of the facts, it was found that the 3,5" microdisks imported from 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 as to pricing in the Community between the producers in the countries concerned.

In these circumstances, and in accordance with the standard practice of the Community institutions, it was considered that there were sufficient grounds to cumulate the imports from the countries concerned.

2. Community consumption, volume and market share of the dumped imports

The Commission has relied on the methodology adopted in the prior proceedings. On this basis, Community consumption was 398 million units in 1990, 582 million in 1991, 788 million in 1992, 1 054 million in 1993 and 1 335 million in the investigation period, i. e. growth of 235 % between 1990 and the investigation period. The volume of dumped imports into the Community of the product concerned originating in the United States, Malaysia and Mexico was 100 million units in 1990, 146 million in 1991, 185 million in 1992, 252 million in 1993 and 357 million in the investigation period — that is, an increase in dumped imports of 256 % between 1990 and the investigation period.

- (32) The development of these imports, assessed in the light of Community apparent consumption, led to a combined share of the Community market held by the United States, Malaysia and Mexico of 25,2 % in 1990, 25 % in 1991, 23,4 % in 1992, 23,9 % in 1993 and 26,8 % in the investigation period.

3. Prices of the dumped imports

- (33) Price undercutting was established, for each of the producers investigated in the countries concerned, by comparing their weighted average 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, the United Kingdom and Spain, 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 determination as to dumping.
- (34) The result of the above comparison showed insignificant margins of undercutting for the cooperating producers in the United States and Mexico. As far as Malaysia was concerned, the weighted average undercutting margins ranged from 8 % to 25 % for the cooperating producers.
- (35) The Commission also sought to establish the extent of undercutting for those producers in the coun-

tries concerned which did not cooperate with its investigation, on the basis of information on export price derived from official statistics on the volume and value of the imports concerned. This examination showed undercutting margins for non-cooperating producers of more than 100 % for imports originating in each of the countries concerned.

4. Situation of the Community industry

(a) Production and capacity utilization

- (36) The volume of production of the product concerned by the Community industry increased from 48 million in 1990, to 69 million in 1991, 105 million in 1992, 177 million in 1993 and 230 million in the investigation period — an absolute increase of 379 % over the period from 1990. Capacity utilization rates went from 60 % in 1990, 76 % in 1991, 57 % in 1992, 62 % in 1993 and to around 86 % in the investigation period.

(b) Sales and market shares

- (37) The Community industry's sales increased from 44 million units in 1990 to 198 million units in the investigation period, thus following the rapid expansion of the Community consumption for the product concerned.

It has to be added, however, that the investment decisions made by the Community industry to meet increases in demand at a time of rapid market growth did not yield the expected results, owing to the dumped imports. The Community industry's share of the Community market, although growing from 11,2 % to 14,9 % between 1990 and the investigation period, was below the level that could have been anticipated when the decisions to expand capacity were made. It should be noted further that the Community industry actually experienced a slight erosion of its market share between 1993 and the investigation period, from 15,0 % to 14,9 %.

(c) Prices

- (38) Complainant Community producer's prices fell overall by 44 % between 1990 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.

(d) Profitability

- (39) The development of prices and production costs resulted in losses from 1990 onwards for the majority of the Community producers concerned. In the investigation period, the average profit situation of the Community industry was just above the break-even point. On an individual basis, one Community producer incurred severe financial losses, while for the others the return on sales was insufficient to recover the costs of investment already incurred, and to support the further investment necessary to ensure a continued presence in this rapidly evolving, high-technology sector.

5. Conclusions on injury

- (40) In the light of the remarks at recital (29) above, and the foregoing analysis, the Commission provisionally finds that the Community industry is suffering material injury.

In its essentials, the situation remains as set out in recital 62 of the Commission Regulation (EEC) No 920/93⁽¹⁾ and recital (43) of Regulation (EC) No 534/94⁽²⁾ imposing provisional anti-dumping duties in the prior proceedings. Although certain quantitative indicators, such as production, sales and capacity utilization showed positive development, due in large measure to the expansion of the market, the benefit of this positive development has been totally offset by the low levels of prices which 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 information technology.

Finally, it should be noted that the evaluation of the above factors has to be seen in the light of the fact that the Community industry was, at the time of the examination, in the process of recovering from the effects of past dumping, as established in the prior proceedings.

F. CAUSATION OF INJURY

- (41) The Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports from the USA, Malaysia and Mexico, and whether other factors may have caused or contributed to that injury.

⁽¹⁾ OJ No L 95, 21. 4. 1993, p. 5.

⁽²⁾ OJ No L 68, 11. 3. 1994, p. 5.

1. Effect of the dumped imports from the United States, Malaysia and Mexico

- (42) In its examination, the Commission found that the increasing volume of the dumped imports, in absolute terms, (an increase at a rate slightly faster than that of consumption) corresponded to a stable market share for most of the period examined, at a level which could be qualified as very substantial, ranging from 23,4 % to 26,8 %. The strong presence of the dumped imports could not fail to have had very negative consequences for the Community industry since it was found that, with the exception of imports from the cooperating producers in the United States and Mexico, the prices of these imports undercut the prices of the Community industry by margins which were always substantial. This situation coincided in time with a continuing precarious financial situation for the Community industry, which had to align its prices downwards in an attempt to resist the pressure of the dumped imports and to capture a viable share of the Community market with a level of production allowing the economic employment of resources. The resulting price depression has led to the general lack of profitability referred to in recital (39) above.

2. Effects of other factors

- (43) 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 argument of one cooperating US producer that imports from countries not covered by this proceeding were responsible for any injury suffered by the Community industry, and that injury for one Community producer might have been due to internal factors bearing no relationship to the dumped imports.
- (44) 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, the People's Republic of China, Hong Kong and Korea were dumped and had caused material injury to the Community industry.

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

In any event, even if it were assumed that imports from countries other than those subject to this proceeding and the prior proceedings 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, taken in isolation, is material.

As to the contention that the unhealthy financial situation of one Community producer bore no relationship to the dumped imports, it is reasonable to assume that, without the effect of dumping the Community producer's position would have improved as a result of the remedial effect of the duties imposed in the prior proceedings.

- (45) In the 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, the People's Republic of China, Hong Kong and the Republic of Korea, the dumped imports from the United States, Malaysia and Mexico, because of their low prices and their share of the Community market, have, taken in isolation, caused material injury to the Community industry.

G. COMMUNITY INTEREST

- (46) In assessing the Community interest, two basic elements have to be taken into account. The first is that special consideration has to be given to the need to eliminate the trade-distorting effects of injurious dumping and to restore effective competition. Secondly, failure to take provisional measures in the present proceeding would aggravate the already precarious situation of the Community industry, marked particularly by a lack of profitability. 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.
- (47) It should also be noted that in two prior proceedings, the Council found it in the Community interest to impose anti-dumping duties on imports of the like product from Japan, Taiwan, the People's Republic of China, Hong Kong and the Republic of Korea; no further information that would lead to a change in the earlier findings has since

become available. Further, the Community interest requires that, in order to avoid discrimination between countries found to have been dumping and causing material injury, protective measures be introduced with regard to imports of the dumped 3,5" microdisks subject to this proceeding.

- (48) Notwithstanding, however, the fact that the Commission received no specific information or submissions regarding Community interest, it examined the potential effects of protective measures on users and on the supply to the Community market on an overall basis.

As to the interests of consumers, and in particular 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, including the software houses.

Further, while it is true that, given the current level of capacity utilization in the Community, imports are necessary to meet the quickly increasing demand on the Community market, anti-dumping measures merely remove the injurious effects of dumping and are not, therefore, an obstacle to filling the gap in demand with supplies from third countries at fair prices; for, 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 in the exporters' price advantage that is eliminated. In these circumstances, imports would still compete on the basis of true competitive advantage and exporters would be unlikely, therefore, to experience diminished access to the Community market.

- (49) After consideration of the various interests involved, it is provisionally found 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, some safeguards will be offered to the component supply industry in the Community.
- (50) The Commission finds, therefore, that it is in the Community interest to adopt anti-dumping measures in order to prevent further injury being caused by the dumped imports concerned during the investigation.

H. DUTY

(51) The Commission considers that the measures should take the form of provisional *ad valorem* duties. For the purpose of establishing the level of the provisional duties, 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.

(52) 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 should be able to increase prices to profitable levels without loss of sales volume. In order to achieve this, the prices of the dumped imports concerned should be increased to eliminate injurious dumping.

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.

(53) To that end, the Commission has used the representative production costs of the complainant industry, together with the amount of profit used in the previous proceeding, namely a margin of 12 % on turnover required to ensure the viability of the Community industry, and which the industry could be expected to attain in the absence of dumped imports.

The resultant prices based on these costs and profits were compared with the prices of the dumped imports used to establish undercutting, as outlined in recital (33).

The differences between those two prices established on a weighted average basis and expressed as a percentage of the free-at-Community-frontier price, were found to be *de minimis* for the cooperating producers in the United States and Mexico. As far as cooperating Malaysian producers, Mega High Tech and Discomp, were concerned, these differences amounted to 13 % and 24,8 %. No provisional duties should, therefore, be imposed on imports of the like product manufactured and exported by the cooperating American and Mexican producers, while the provisional duties imposed on the Malaysian producers should be limited to the injury margins established above, which are below the dumping margins provisionally established.

(54) In establishing the level of duty for producers in the United States, Malaysia and Mexico which neither replied to the Commission's questionnaire nor otherwise made themselves known, the Commission considers it appropriate, for the reasons outlined in recital (24), to establish the level

of provisional anti-dumping duty at the dumping margin established in recital (24) for imports originating in the countries concerned, namely 44 %, 46,4 % and 44 % respectively.

(55) 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 20 90*10), and originating in the United States of America, Malaysia and Mexico.

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

Country	Rate of duty	Taric additional code
United States	44 %	8 857
Mexico	44 %	8 857
Malaysia	46,4 %	8 858

with the exception of imports which are manufactured and sold for export to the Community by the following companies which shall be subject to the rate of duty mentioned hereunder :

Country and producer	Rate of duty	Taric additional code
(a) United States : — 3M — TDK — Verbatim	0 % 0 % 0 %	8 853
(b) Mexico — Verbatim	0 %	8 854
(c) Malaysia — Mega High Tech — Discomp	13 % 24,8 %	8 855 8 856

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

4. 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 20 of Regulation (EC) No 3283/94, the parties concerned may make known their

views and apply to be heard 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, 16 October 1995.

For the Commission

Leon BRITTAN

Vice-President
