COMMISSION REGULATION (EC) No 2140/97

of 30 October 1997

imposing a provisional anti-dumping duty on imports of personal fax machines originating in the People's Republic of China, Japan, Republic of Korea, Malaysia, Singapore, Taiwan and Thailand

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as amended by Regulation (EC) No 2331/96 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 1 February 1997, the Commission announced by a notice (hereinafter referred to as 'Notice of Initiation') published in the *Official Journal of the European Communities* [3] the initiation of an anti-dumping proceeding with regard to imports into the Community of personal or consumer fax machines originating in the People's Republic of China (hereinafter referred to as China), Japan, Republic of Korea, Malaysia, Singapore, Taiwan and Thailand, and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged in December 1996 by Philips Personal Fax Electronik Fabrik, Communications Systems, Wien Microelectronics. The complainant represented a major proportion of Community production of the like product. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The Commission officially adivsed the producers/exporters and importers known to be concerned as well as their associations, the representatives of the exporting countries concerned and the complainant, of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of Initiation.

(4) A number of producers/exporters in the countries concerned, as well as Community producers, Community users and importers made their views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted a hearing.

(5) The Commission sent questionnaires to the Community producers, to all 37 companies listed in the complaint as producers/exporters of the product concerned, to all importers known to be concerned and to all the other companies which made themselves known to the Commission within the deadline set by the Notice of Initiation.

(6) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination of dumping, injury and Community interest and carried out investigations at the premises of the following companies:

(a) Community producer

— Philips Personal Fax Electronik Fabrik, Communications Systems, Wien-Microelectronics, Austria

(b) Importers

— Telecom Eireann, Ireland
— Telecom Finland
— Kaukomarkkinat Oy, Finland
— Ky Enestam, Finland
— Telia, Sweden
— Telecom Danmark A/S
— Oki, UK
— Canon, Netherlands
— Alcatel, France
— Olivetti, Italy
— British Telecom, UK
— Triumph Adler, Germany
— Deutsche Telekom, Germany

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 317, 6. 12. 1996, p. 1.
[3] OJ C 32, 1. 2. 1997, p. 3.

(c) Producers/exporters

Republic of Korea

— Samsung Electronics Co. Ltd, Seoul
— Daewoo Telecom Ltd, Seoul
— Nixxo Telecom Co. Ltd, Seoul
— Tae II Media Co. Ltd, Seoul

Japan

— Brother Industries Ltd., Nagoya
— Tottori Sanyo Electric Co. Ltd., Tottori
— Murata Machinery Ltd., Kyoto (products originating in China)
— Funai Electric Co. Ltd., Osaka, (products originating in China)

Taiwan

— Taiwan Telecommunication Industry Co. Ltd, Taipei
— Kinpo Electronic Inc., Taipei
— Sampo Corporation, Taipei

Singapore

— Matsushita Graphic Communication Systems (S) Pte. Ltd., Singapore
— Asia Matsushita Electric (S) Pte. Ltd., Singapore

Thailand

— Cal-Comp Electronics (Thailand) Co. Ltd., Bangkok

Hong Kong (products originating in China)

— Highsonic Industrial Ltd., Hong Kong
— Murata Machinery (H.K.) Ltd., Hong Kong
— Sanyo Electronics (H.K.) Ltd., Hong Kong
— CCT Telecom Holdings Limited, Hong Kong

(7) The investigation of dumping covered the period from 1 January 1996 to 31 December 1996 (hereinafter referred to as the 'investigation period'). The examination of injury covered the period from 1993 up to the end of the investigation period.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(8) The proceeding covers personal or consumer fax machines. These machines are mainly intended for the transmission and reception of paper documents using a telephone signal, are often used at home or as a personal desktop set and usually offer additional facilities for communication. In addition to the fax function and telephone(s) and/or connection(s) for a telephone set or cordless hand-set, it may or may not include a paper feeder and offer one or more of the following functions: a cassette or digital answering function, a copy function or an intercom facility. The above list is not exhaustive.

For the purpose of provisional findings, personal or consumer fax machines have been distinguished from professional fax machines by reference to their weight and size. Only fax machines with a weight of 5 kilograms or less and with dimensions (width × depth × height) of the main body measuring 470 mm × 450 mm × 170 mm or less, are regarded as personal or consumer fax machines for the purposes of this investigation. For the purpose of assessing the weight and dimensions, the paper load and other consumables, as well as any cordless hand-set, are excluded.

(9) Several parties concerned contested this product definition. They argued that it is too wide and could, as technological development progresses, cover in the future fax machines for professional and business use.

The complaint concerns so-called personal or consumer fax machines. Consequently, the majority of the total Community fax market does not fall within the scope of this proceeding, since the characteristics of these machines (document feeders, multi-destination facilities) and dimensions (on average over 10 kg) clearly aim at professional use. Moreover, only professional fax machines are currently using printing technologies such as ink-jet and laser.

(10) In this respect, it should be noted that the Commission considered whether or not there was a more effective way to define the product. However, for the time being, no effective alternative was found. For the purpose of the provisional findings it was therefore decided that a definition based on the combination of the weight and size of the machine was the best option which had the advantage of clarity and certainty necessary for the conduct of the investigation and for the effective enforcement of any duties which may be imposed. The issue of product defintion will be further investigated and in particular printing technique and performances, having regard to consumer perception. Notwithstanding the above, and pending the conclusion of the investigtion, it is considered that given the arguments put forward by interested parties and the fact that, at present, fax machines using ink-jet or laser printing technologies are aimed only at professional use, the machines using these technologies should be excluded from the application of the provision anti-dumping duty.

(11) The Commission found that personal fax machines produced by the Community industry and sold on the Community market as well as personal fax

machines products in China, Japan, Republic of Korea, Malaysia, Singapore, Taiwan and Thailand were similar or comparable.

Since there were no differences in the basic characteristics and uses of the different models of personal fax machines, the Commission found that personal fax machines sold on the domestic market of the exporting countries and the models exported to the Community were 'like products' within the meaning of Article 1 (4) of Regulation (EC) No 384/96 (referred to as 'the Basic Regulation'). It was also found that fax machines exported from China to the Community and those sold on the domestic market of the Republic of Korea, which served as an analogue country, were alike.

C. DUMPING

1. Level of cooperation

(12) The level of cooperation by the producer/exporters in this proceeding was particularly low in Malaysia, Thailand, Taiwan, Japan and China, since the export volume to the Community covered by the cooperating exporting producers represented only a small fraction of the total exports from the countries concerned.

(13) The information provided by the cooperating producers/exporters was verified and in the majority of cases was taken into account. Nevertheless, in some cases the investigations carried out on the spot revealed that part of the information was inaccurate, unsubstantiated or insufficient, and consequently it had to be disregarded. In these situations the Commission did not make use of such information but instead used the facts available, pursuant to Article 18 of the Basic Regulation.

2. Market economy countries

(a) *General methodology*

(a.1) Normal value

(14) As far as the determiantion of normal value for market economy countries is concerned, the Commission first established, for each producer/exporter, whether its total domestic sales of personal fax machines were representative in comparison with its total export sales to the Community. In accordance with Article 2 (2) of the Basic Regulation, domestic sales were considered representative when the total domestic sales volume of each producing company was at least equal to 5 % of its total export sales volume to the Community.

(15) The Commission subsequently established those models of personal fax machines sold domestically by those companies having representative domestic sales which could be considered identical or directly comparable to the models sold for export to the Community.

(16) For each of the models sold by the producers/exporters on their domestic markets and found to be comparable to models sold for export to the Community, the Commission established whether domestic sales were sufficiently representative for the purposes of Article 2 (2) of the Basic Regulation. Domestic sales of a particular model were considered sufficiently representative when the total number of personal fax machines of that model sold domestically during the investigation period represented 5 % or more of the total number of personal fax machines of the comparable model sold for export to the Community.

(17) The Commission finally examined whether the domestic sales of each model could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales of the model in question. In cases where the number of personal fax machines sold at a net sales price equal to or above the calculated cost of production (profitable sales) represented 80 % or more of the total sales volume, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales made during the investigation period, whether these sales were profitable or not. In cases where the volume of profitable sales of personal fax machines represented less than 80 % but more than 10 % of the total sales volume, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only.

(18) In cases where the volume of profitable sales of personal fax machines represented less than 10 % of the total sales volume, it was considered that this particular model was sold in insufficient quantities for the domestic price to provide an appropriate basis for normal value.

(19) When the requirements set out in recitals (14) to (17) were met, normal value was based for each model on the basis of the prices paid or payable, in the ordinary course of trade, by independent customers in the domestic market of the exporting country, as set out in Article 1 (1) of the Basic Regulation.

(20) Wherever domestic prices of a particular model sold by a producer could not be used, constructed normal value had to be used in preference to domestic prices of other producers/exporters, due to the number of different models and the variety of factors to be considered when assessing one particular model produced by one particular company (such as different characteristics or functions). Using the domestic prices of other companies would have meant in this case making numerous adjustments, most of which would have had to be based on estimates.

Consequently, in accordance with Article 2 (3) of the Basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported models, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses (SG&A) and a reasonable percentage margin of profit. To this end, the Commission examined whether the SG&A incurred and the profit realised by each of the producers/exporters concerned on the domestic market constituted reliable data. Actual domestic SG&A expenses were considered reliable when the domestic sales volume of the company concerned could be regarded as representative (see recital (16)).

The actual domestic profit margin was used when the number of personal fax machines sold at a net sales price above the calculated cost of production represented more than 10 % of the total domestic sales volume of the company concerned. Where this criterion was not met, for each of the exporting countries the weighted average of the other companies' profit margins was used.

(a.2) Export price

(21) In all cases where personal fax machines were exported to independent customers in the Community, the export price was established in accordance with Article 2 (8) of the Basic Regulation, namely on the basis of export prices actually paid or payable.

(22) However, in some cases the export price was considered to be unreliable because the sale was made to a related party. In those cases the export price was constructed pursuant to Article 2 (9) of the Basic Regulation, namely on the basis of the price at which the imported products were first resold to an independent buyer.

(23) In such cases, adjustments were made for all costs incurred between importation and resale and for profits accruing, in order to establish a reliable export price at the Community frontier level.

(24) The profit margin was provisionally estimated at 5 %, which was considered a conservative estimate for the sector according to the information made available by independent importers in the Community regarding the setting of their profit margin.

(a.3) Comparison

(25) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2 (10) of the Basic Regulation.

(26) Accordingly, allowances for differences in import charges, transport, insurance, handling charge, packing costs, credit, discounts and warranty have been granted where applicable and justified, namely when a claim was made within the time limits set for that purpose, and when the party concerned could demonstrate the effect of any alleged difference on prices and price comparability.

(a.4) Dumping margin

(a.4.1) Dumping margin for companies investigated

(27) According to Article 2 (11) of the Basic Regulation, the weighted average normal value by type was normally compared with the weighted average export price. However, whenever it was found that there was a pattern of export prices which differed significantly among different purchasers, regions or time periods and that the above comparison did not reflect the full degree of dumping being practised, the weighted average normal value was compared to prices of all individual export transactions to the Community.

(a.4.2) Dumping margin for non-cooperating companies

(28) For non-cooperating companies, a 'residual' dumping margin was determined in accordance with Article 18 of the Basic Regulation, on the basis of the facts available. In view of the general low level of cooperation it was decided to adopt the following approach:

For each of the exporting countries the company with the highest dumping margin was selected and the highest dumped model, produced and sold by this company in significant quantities was identified. The residual dumping margin was determined on the basis of the weighted average margin established for this model, expressed as a percentage of the CIF import price of the Community border. The Commission considered that this was the most appropriate method to avoid giving a bonus for non-cooperation.

(b) *Republic of Korea*

(29) Four companies replied to the questionnaire for producers/exporters.

(b.1) Normal value

(30) On the basis of the method referred to in recital (19), it was possible, for 19 models sold for export to the Community, to establish normal value on the basis of the domestic price of comparable models in accordance with Article 2 (2) of the Basic Regulation.

(31) For all other models sold for export to the Community, normal value had to be constructed, as per recital (20).

(32) For one of the Korean companies it was found that the information provided regarding the cost of production of machines sold in the domestic market contained serious inconsistencies. It was therefore decided to use, in part, such facts as were available in order to assess its normal value, as was explained in recital (13). For this purpose the information collected and verfied on the spot was applied.

(b.2) Export price

(33) All sales of fax machines made by two of the companies and some sales made by the other two companies on the Community market were to independent importers in the Community. Consequently, the export price was established by reference to the prices actually paid or payable.

(34) Export prices of sales made by the two companies through related importers were constructed on the basis of the price paid or payable by the first independent customer for the product concerned, less the costs of importation, SG&A expenses and a reasonable amount for profit, as set out in recitals (22) to (24).

(35) The Commission found during the on-the-spot investigation that one company's export sales to the Community had not been fully reported. The exporter sold fax machines for export to the Community via a third party in Hong Kong but had omitted to report these sales. Since the Commission was unable to establish the extent of those transactions it was decided to apply Article 18 of the Basic Regulation and estimate the transactions at 10 % fo total export sales to the Community. The highest dumping margin found for a model sold by this company to unrelated customers was attributed to these sales.

(b.3) Comparison

(36) Allowances for differences in transport, insurance, handling charges, packing costs, credit, discounts and warranty have been granted where applicable and justified.

(37) All companies claimed an allowance for import charges. In view of the fact that the companies calculated their claim on average basis for all products and since they did not demonstrate the relation between the duty paid and the specific model of fax machine concerned, the claim for the adjustment was rejected.

(38) Three companies claimed an adjustment for level of trade on the basis that price comparability was affected by the different functions of the buyers on the domestic and export markets. However, none of them was able to demonstrate any consistent difference in its pricing policy with regard to the allegedly different sales channels. During the investigation it was found that no distinction was made between different levels of trade when deciding on prices. Consequently, given that there was no evidence of a difference in level of trade affecting price comparability, no adjustment was granted in this respect.

(39) All companies claimed an allowance for the credit cost of sales on the domestic market. The allowance claimed was made on the basis of an open account, revolving payment system without evidence of an agreement between supplier and buyer of the product at the time of sale. This claim was rejected on the ground that, in accordance with point (g) of Article 2 (10) of the Basic Regulation,

an adjustment can only be given for the number of days agreed at the time of the sale, as only the expense of that number of days can be considered to be included in the price.

(b.4) Dumping margin

(40) Pursuant to Article 2 (11) of the Basic Regulation, the comparison was made on the basis of a weighted average normal value to a weighted average export price for all companies.

(41) The comparison, as described under recital (27) above, shows the existence of dumping in respect of all producers which fully cooperated with the Commission. The provisional dumping margins expressed as a percentage of the CIF import price at the Community border are the following:

— Samsung Electronics Co. Ltd, Seoul	24,5 %
— Daewoo Telecom Ltd, Seoul	13,2 %
— Nixxo Telecom Co., Ltd, Seoul	10,0 %
— Tae Il. Media Co., Ltd, Seoul	9,2 %.

(42) For any non-cooperating companies, the provisional residual dumping margin had to be assessed on the basis of the information available, as per recital (28). Expressed as a percentage of the CIF import price at the Community border, the residual margin is 33,8 %.

(c) *Japan*

(43) In total two companies with production in Japan replied to the questionnaire and were investigated.

(c.1) Normal value

(44) After assessing representativeness of domestic sales, type comparability and type specific representativeness, and after performing the ordinary course-of-trade test, as explained in section (a.1), the Commission calculated the normal values on the basis of actual domestic prices in all cases for one of the companies and in one case for the other company, in accordance with Article 2 (2) of the Basic Regulation.

(45) In all other cases, normal value had to be calculated, in accordance with Article 2 (3) of the Basic Regulation, on the basis of a constructed value for the products exported to the Community. The constructed normal value was established as explained under recital (20). SG&A expenses and a domestic profit margin were added to the manufacturing costs of the exported types of the company concerned. The profit margin found for one of the companies was applied to construct normal value for the one which did not have sufficient profitable sales.

(c.2) Export price

(46) All sales on the Community market of personal fax machines made by Japanese companies were made to related importers in the Community. Consequently, the export price for the companies was constructed in all cases.

(c.3) Comparison

(47) Allowances for differences in transport, packing costs, charges, credit costs and commissions have been granted where applicable and justified.

(48) The two Japanese companies claimed an allowance for differences in physical characteristics between fax machines sold in Japan and those exported to the Community. As the claim for such alleged difference was not substantiated on the basis of the difference in market value, as required by point (a) of Article 2 (10) of the Basic Regulation, it was provisionally decided to disregard claims for physical differences made on the above basis.

(49) The two companies claimed an adjustment for differences in level of trade, on the basis that the reconstructed export price would be at a different level of trade from the normal value.

The claim could not be accepted because the exporters concerned were unable to demonstrate that the constructed export price was at a different level of trade from the normal value and that this difference affected price comparability as required by point (d) of Article 2 (10) of the Basic Regulation. It has to be noted that these companies were not able to show any repercussions on prices brought about by this situation.

(50) The two companies also claimed adjustments for other factors such as salesmen's salaries and other related costs or promotion expenses, should their claim for level of trade be rejected. Pursuant to point (k) of Article 2 (10) of the Basic Regulation, producers/exporters may also claim allowances for differences in other factors not provided for under points (a) to (j) if it is demonstrated that they affect price comparability. However, in this case the companies did not provide any evidence that these factors affected price comparability. The claim was therefore rejected.

(c.4) Dumping margin

(51) The comparison, as described under recital (27), shows the existence of dumping on the part of the two companies. Pursuant to Article 2 (11) of the Basic Regulation, the comparison was made on the basis of a weighted average normal value to a weighted average export price for both companies.

(52) The provisional dumping margins, expressed as a percentage of the CIF import price at the Community border, are the following:

— Brother Industries, Ltd., Nagoya 42,3 %

— Tottori Sanyo Electric Co., Ltd., Tottori 109,4 %.

(53) For non-cooperating companies, the provisional dumping margin had to be assessed on the basis of the facts available (see recital (28)). Expressed as a percentage of the CIF import price at the Community border, the margin is 121,6 %.

(d) *Taiwan*

(54) Five Taiwanese companies provided a reply to the questionnaire for producers/exporters. Three companies were investigated.

(55) One company allegedly exported only five units (samples): therefore it was considered not to have been involved in the export of the product concerned during the investigation period. The company was consequently informed of its exclusion from the proceeding and, in the absence of any comment on its part, was not investigated.

(d.1) Non-cooperation

(56) Two Taiwanese companies were regarded as non-cooperating.

One company provided a substantially incomplete reply to the questionnaire, which made it impossible to perform a dumping calculation. It did not react to the deficiency letter and subsequently was not subject to an on-the-spot verification.

A second company submitted a reply to the Commission's questionnaire which, despite a number of deficiencies, apparently contained sufficient information to allow a provisional caculation to be made and to justify an on-the-spot verification. However, it became evident during the on-the-spot verification that substantial modifications presented during the visit could not be verified and caused undue difficulty in arriving at a reasonably accurate finding. Furthermore, part of the missing information from the reply was never submitted, despite several requests.

Both companies were informed that use was being made of facts available, in accordance with Article 18 (4) of the Basic Regulation.

(57) At the beginning of the on-the-spot verfications, all the Taiwanese producers/exporters which were investigated submitted substantial modifications to their questionnaire replies, thereby ignoring the deadlines set by the Commission in its questionnaires, deficiency letters and pre-verification letters.

This type of action prevents the Commission from conducting a proper investigation and it imposes an additional burden so far as completion of the verification within binding deadlines is concerned. Moreover, accepting such conduct would put other companies which had adhered to the deadlines at an unfair disadvantage.

It was consequently decided to disregard any substantial changes to the questionnaire reply which should have been known to the producers at the moment when the original reply was submitted and which were only presented for the first time during the on-the-spot investigation, and to apply Article 18 of the Basic Regulation to the relevant sections.

(d.2) Normal value

(58) After assessing representativeness of domestic sales, type comparability and type specific representativeness, and after performing the ordinary course-of-trade test, as explained in section (a.1) above, the Commission concluded that, in the case of two companies, normal value for nine models could be based on actual domestic price, in accordance with Article 2 (2) of the Basic Regulation.

(59) For all other models sold for export to the Community by the two companies, the normal value had to be calculated, in accordance with Article 2 (3) of the Basic Regulation, on the basis of a constructed value for the products exported to the Community. The constructed normal value per type was established as explained under recital (20).

(d.3) Export price

(60) All exports of personal fax machines to the Community by the two cooperating companies were made direct to independent customers. Consequently, the export price was established by reference to the prices actually paid or payable, in accordance with Article 2 (8) of the Basic Regulation.

(d.4) Comparison

(61) Where applicable and justified, adjustments were made for differences in import charges, transport and insurance, packing costs, credit costs and commissions.

(62) One of the exporters requested that specific allowances be made by deducting salesmen's salaries, advertising expenses and rent from normal value. However, the company was unable to show any effect on price comparability, as required by point (k) of Article 2 (10) of the Basic Regulation.

Although the company acknowledged that it was unable to prove any price difference it nevertheless stated that its claim was based on differences in the functions performed on the domestic and export markets which were reflected in different SG&A expenses for each of these markets. However, the company did not demonstrate that there were any such differences in function nor that they affected price comparability. The claim was therefore rejected.

(d.5) Dumping margin

(63) The comparison of the weighted average normal value with the weighted average export price, as described under recital (27) above, shows the existence of dumping on the part of the two companies. The provisional dumping margins expressed as a percentage of the CIF import price at the Community border are the following:

— Kinpo Electronics, Inc., Taipei 6,0 %

— Sampo Corporation, Taipei 56,2 %.

(64) For all other companies, the provisional dumping margin had to be assessed on the basis of the information available (see recital (28)). Expressed as a percentage of the CIF import price at the Community border, the margin is 60,8 %.

(e) *Singapore*

(65) Two companies (a producer and a trader) belonging to the same economic entity replied to the questionnaire and were subsequently investigated.

(e.1) Normal value

(66) On-the-spot findings revealed partial non-cooperation by the Singapore exporter because the company failed to report a considerable number of domestic transactions. In accordance with Article 18 (1) of the Basic Regulation, the domestic sales not reported in the questionnaire reply were included for the purpose of assessing the normal value at the level of the highest prices of comparable models which had been reported.

(e.2) Export price

(67) Exports by the company were made both direct to independent importers in the Community and to related importers. In the first case the export prices were established, in accordance with Article 2 (8) of the Basic Regulation, by reference to the prices paid or payable for the product concerned sold for export to the Community.

(68) The export price of the sales made via a related importer was constructed by deducting from the resale price to the first independent customer all costs incurred between importation and resale and a reasonable profit margin, in accordance with Article 2 (9) of the Basic Regulation.

(e.3) Comparison

(69) Allowances for differences in transport, commissions, packing costs, handling charges and credit costs have been granted where applicable and justified.

(70) The producer/exporter requested an adjustment for discounts granted, on the ground that a number of fax machines were allegedly given free of charge to a domestic customer, on the basis of a verbal agreement, to compensate for a reduction of market prices for certain fax machines which this customer allegedly had in stock. Certain price reductions are alleged to have been granted for the same reason. The company did not demonstrate that these machines had been sold during the investigation period or that this kind of assistance was acknowledged by both parties at the time of sale. Consequently the claim was rejected.

(71) The company claimed an adjustment for differences in level of trade, on the basis that the reconstructed export price would be at a different level of trade from the normal value.

This claim could not be accepted because the exporter concerned did not demonstrate that the constructed export price was at a different level of trade from the normal value and that this difference affected price comparability, as is required by point (d) of Article 2 (10) of the Basic Regulation.

(72) The exporter requested alternatively that, should it not be granted an allowance for level of trade, other specific allowances such as those granted in respect of salesmen's salaries, advertising expenses, etc., should be deducted from normal value.

Pursuant to point (k) of Article 2 (10) of the Basic Regulation, producers/exporters may also claim allowances for differences in other factors not provided for under points (a) to (j) if it is demonstrated that they affect price comparability.

However, in the present case the companies did not provide any evidence that these factors affected price comparability. The claim was therefore rejected.

(73) The producer/exporter paid certain commissions to related companies in Japan, allegedly as a compensation for their participation in the marketing of the product concerned. The total amount of the commissions was claimed as an allowance.

It was verified on the spot that the commissions paid to Japan for the domestic slaes constituted mere internal transfers of cash, since the participation of the Japanese related companies in domestic sales could not be established. It was therefore decided to disregard this claim.

(e.4) Dumping margin

(74) The comparison of the weighted average normal value with the weighted average export price shows the existence of dumping in respect of the investigated company. The provisional dumping margin expressed as a percentage of the CIF import price at the Community border is the following:

— Matsushita Graphic Communication Systems (S) Pte. Ltd., Singapore 26,5 %.

(75) For non-cooperating companies, the provisional dumping margin had to be assessed on the basis of the information available (see recital (28)). Expressed as a percentage of the CIF import price at the Community border, the margin is 64,3 %.

(f) *Thailand*

(76) Only one Thai company cooperated with the Commission's investigation. This company is related to one of the cooperating Taiwanese producers/exporters.

(f.1) Normal value

(77) The sole cooperating producer did not have any sales of the product concerned on its domestic market during the investigation period. Consequently, the normal value for this producer was constructed in accordance with Article 2 (3) of the Basic Regulation.

As no information regarding either sales of the like product by other producers or sales made in the same business sector was available for the domestic market, the Commission considered that the SG&A costs and profit to be used in constructing the normal value should be established on 'any reasonable basis' as provided for in point (c) of Article 2 (6) of the Basic Regulation. For that purpose, and in view of the absence of any other reliable information on the Thai market, it was considered appropriate to take the average domestic SG&A costs and profit established on profitable sales in Taiwan. The use of Taiwanese SG&A and profits appeared appropriate since the Thai producer is partially owned by one of the main Taiwanese companies and Taiwan is a large market where the economic operators concerned operate in a competitive environment.

(f.2) Export price

(78) All sales of personal fax machines by the Thai company on the community market were made via the related producer/exporter in Taiwan, which then re-exported the goods. The export price was established on the basis of the prices paid or payable by independent customers in the Community to the Taiwanese company, since this price was considered to be reliable as it was not affected by intra-group relations.

(f.3) Comparison

(79) Allowances for differences in transport, packing costs, charges, credit costs and commissions have been granted where applicable and justified.

(80) As was explained above all exports by the Thai producer were made via its related company in Taiwan. It has been determined that because of the relationship between the two companies, the prices charged by the Thai producer were not reliable. To establish a reliable export price to the Community from Thailand, the price charged from Taiwan to the Community was adjusted to an ex-Thailand level. As the related Taiwanese company's functions can be considered similar to those of a trader acting on a commission basis, an adjustment of 5 % was deducted from the price to the first independent customer in the Community. This figure is considered reasonable given the degree of the related company's involvement in the selling activities of the Thai producer.

(f.4) Dumping margin

(81) The comparison of the weighted average normal value with the weighted average export price shows the existence of dumping in respect of the cooperating company. The provisional dumping margin expressed as a percentage of the CIF import price at the Community border is the following:

— Cal-Comp Electronics (Thailand) Co. Ltd., Bangkok 9,9 %.

(82) For non-cooperating companies, the provisional dumping margin had to be assessed on the basis of the information available. Expressed as a percentage of the CIF import price at the Community border, the margin is 22,0 %.

(g) *Malaysia*

(g.1) Non-cooperation

(83) None of the Malaysian producers/exporters cooperated in the present proceeding. In the absence of any information provided by the companies the dumping margin for all exports orginating in Malaysia was assessed on the basis of the facts available, pursuant to Article 18 (1) of the Basic Regulation.

(g.2) Dumping margin

(84) The provisional dumping margin had to be assessed on the basis of the facts available. Since no information permitting an assessment of the level of dumping being practised by any Malaysian producers/exporters was available, it was decided to use the highest dumping margin found for cooperating companies, namely the margin found for one of the Japanese exporters, in order not to reward non-cooperation. Expressed as a percentage of the CIF import price at the Community border, the margin is 109,4 %.

3. Non-market economy countries

(a) *The People's Republic of China*

(85) Five companies producing personal fax machines of Chinese origin cooperated in the present proceeding. Four of those companies sold their products to the Community via Hong Kong and were consequently subject to an on-the-spot verification.

(86) Except where otherwise stated hereinafter, the methodology used to assess the dumping margin for China was the one described in recitals (14) to (28), for the market economy countries.

(a.1) Choice of analogue country

(87) Since China is not a market economy country, it was necessary to compare the export prices of the Chinese exporters with a normal value established with regard to a third market economy country. Korea was suggested by the complainant and proposed by the Commission in the Opening Notice.

In order to obtain a precise picture of the competitiveness of each domestic market it was decided to ask the national authorities of the market-economy exporting countries involved to supply information about the imports of fax machines into such countries. Furthermore, an investigation was made in order to establish the possibility of using normal values from the United States. None of the United States companies agreed to cooperate. The comments provided by the parties which objected to the initial proposal were also considered but they were either contradicted by the Commission's findings or deemed unsuitable for providing a valid alternative.

The Commission finally considered that Korea was an appropriate market economy third country for the purpose of establishing normal value, in accordance with Article 2 (7) of the Basic Regulation, in view of the size and development of the market and the level of competition between the various companies involved with the product concerned. Indeed, Korean domestic sales of the product concerned are representative when compared with Chinese exports to the Community. Moreover, the presence of at least four producers in the domestic market ensures a reasonable degree of competition. Finally, it should be noted that there is a significant volume of imports of fax machines into Korea.

(a.2) Individual treatment

(88) All five companies requested individual treatment.

(89) In accordance with Article 9 (5) of the Basic Regulation, it is the Commission's policy to calculate a country-wide duty for non-market economy countries, except in those cases where companies can demonstrate a degree of legal and factual independence comparable to that which would prevail in a market economy country and which would justify a departure from the determination of a single countrywide duty. To this end, detailed questions regarding the ownership, management, control and determination of commercial and business policies were addressed to the exporters.

(90) As a result, it was decided to calculate individual dumping margins for two Hong Kong based exporters related to Japanese producers/exporters which sold personal fax machines of Chinese origin produced by subcontractors in China. It particularly appeared that the export prices to the Community and the marketing policies were determined by the Japanese head office, without any interference from the Chinese State.

(91) The remaining three cooperating companies, all of which were established in China, failed to prove unequivocally that they were free from any legal or actual control by the State authorities which is typical of a non-market economy country, and will therefore be attributed the countrywide margin calculated for China.

(a.3) Normal value

(92) Normal value for the Chinese exporters was calculated on the basis of the normal values established for the cooperating Korean companies (see recitals (30) and (31)). In this context the Korean models used were those sold on the domestic market which were found to have the same characteristics as the Chinese models exported to the Community.

(a.4) Export price

(93) The procedures and methodologies followed by the Commission in assessing the export price of products originating in China were the same as those explained under recitals (21) to (24) for the market economy countries.

(94) For transactions made through related importers, the export prices were constructed on the basis of the price paid or payable by the first independent customer for the product concerned, less the SG&A costs and a reasonable amount for profit, as explained in recital (23). In the absence of any representative information from independent importers in the Community, the profit margin was provisionally estimated at 5 %.

(a.5) Comparison

(95) Where applicable, adjustments were made to the export price to take account of credit costs, transport, packing and commissions.

(96) As regards normal value, all allowances granted to the Korean exporters (see recital (36)) were also deducted in the case of China.

(97) All exports of products manufactured in China were sold to the Community via related companies in Hong Kong, Japan or Korea. To establish a reliable export price to the Community from China, the price charged by the related companies was adjusted to an ex-China level. As the related companies' activities include functions similar to those of a trader, allowance was made, both on the basis of the actual costs incurred and reasonable estimations, to take account of the fact that the sales were made via these third countries.

(98) One company which sells only as an original equipment manufacturer ('OEM') to the Community requested an adjustment for level of trade. However, the investigation in Korea showed that there were no consistent nor distinct differences in prices on the Korean market between sales to OEM and own sales. The claim was therefore rejected.

(a.6) Dumping margin

(99) Weighted average normal value by model, as determined for Korea, was compared with the weighted average export price, both duly adjusted.

(100) The comparison shows the existence of dumping.

(101) For other exports from China, the determination of the dumping margin was based on the dumping margins found for the other three cooperating exporters, as well as information available from Eurostat to account for exports made by non-cooperating parties.

(102) The provisional dumping margin for China, expressed as a percentage of the CIF import price at the Community border, is 58,1 %.

(103) The provisional dumping margins for the companies which provisionally received individual treatment, expressed as a percentage of the CIF import price at the Community border, are as follows:

— Murata Machinery (H.K.) Ltd., Hong Kong (products originating in China) 43,1 %

— Highsonic Industrial Ltd., Hong Kong, (products originating in China) 45,6 %.

D. COMMUNITY INDUSTRY

(104) The complainant represents more than 25 % of total production of the like product manufactured by the Community industry. Sagem, the other major Community producer, has not opposed the complaint. As to certain companies related to Japanese exporters, being producers in the Community, their situation is taken into account for the assessment of both causality and Community interest, but they are excluded from the definition of the 'Community industry', since, in keeping with the consistent practice of the Community institutions, it is considered that they are, through their relationship with the producers/exporters concerned, shielded from the injurious effects of dumped imports. The complainant is therefore deemed to represent the Community industry within the meaning of Article 4 (1) of the Basic Regulation since it fulfils the requirements of representativity within the meaning of Article 5 (4) of that Regulation.

E. INJURY

1. Preliminary remarks

(105) For the purpose of establishing the injury suffered by the Community industry, all necessary elements

of appraisal are based on both data submitted by interested parties which were verified in the course of the proceeding and statistical data.

2. Community consumption

(106) Owing to the substantial lack of cooperation on the part of several exporting countries concerned, of Community operators to the exporting countries concerned, and of the other non-complainant Community producer (Sagem), the determination of Community consumption had to be established on verified information submitted by the Community industry and partly on best information available. On the basis of these data, Community consumption figures were obtained by adding import volumes of each exporting country concerned to the sales volumes of both the complainant and the other Community producer Sagem, as well as the other Community producers related to Japanese exporters. The following trend can be observed between 1993 and the investigation period: Community consumption of the product concerned increased from 1 173 416 units in 1993 to 2 583 587 units at the end of the investigation period — a rise of 120 %.

3. Factors and considerations relating to the dumped imports

(a) *Cumulation*

(107) In keeping with the consistent practice of the Community institutions, the Commission examined whether the effect of the imports of personal fax machines from the People's Republic of China, Japan, Korea, Malaysia, Singapore, Taiwan and Thailand with regard to the Community industry should be analysed cumulatively on the basis of the criteria defined in Article 3 (4) of the Basic Regulation.

(108) It was found that the dumping margins established are more than *de minimis*, that the import volumes are significant, and that the lowest market share of the exporting countries concerned was over 2 % and therefore not negligible. Furthermore, it is considered that, in general, personal fax machines imported from the People's Republic of China, Japan, Korea, Malaysia, Singapore, Taiwan and Thailand are alike in all respects and are marketed in the Community within the same period, adopting similar price and market behaviour. These imports competed with each other and with the like product manufactured by the Community industry. In these circumstances and in accordance with the standard practice of the Community institutions, it was considered appropriate to cumulate the imports from the countries concerned.

(b) *Trend of the imports of the exporting countries concerned*

(b.1) Methodology

(109) In this respect, it has to be emphasised that the Community industry entered the market only in 1991. For this reason, it built up its production capacities in 1993, reached its full capacity in 1994 and increased its production capacity, sales volume and market shares from 1993 to 1994 at the expenses of the exporters of the countries concerned. However, in the period 1994 to 1996, the Community industry lost considerable sales volume and market share, while the exporting countries concerned showed very significant increases in all respects.

(110) Therefore, for the purpose of analysing injury and causation of injury, two different periods have to be distinguished: from 1993 to 1994 and from 1994 to the investigation period.

(b.2) Volume, market shares and average prices

(111) From 1993 to 1994, the exporting countries concerned, even though their market shares decreased by 12,4 % points (from 65,3 % to 52,90 %), increased their export volume to the Community by 27,8 % (from 765 836 units to 978 604 units). In comparison, Community consumption went up by 57,7 %.

(112) Between 1994 and the investigation period, the import volume of the exporting countries concerned increased by 72,7 % (from 978 604 units to 1 690 241 units), while their market shares increased by 12,5 % points (from 52,9 % to 65,4 %). In comparison, Community consumption in this period increased by 39,6 %.

(113) The overall trend for the period from 1993 to the end of the investigation period shows that import volumes from the exporting countries concerned have increased by 120 %.

(114) The trend of import prices from the cooperating exporters shows that average import prices decreased by 11 % from 1993 to 1994, with further decreases of 20,5 % (1994 to 1995) and 7,1 % (from 1995 to the investigation period). The overall price decrease from 1993 to the investigation period was 34,3 %, and the decrease from 1994 to the investigation period was 26,2 %.

These figures show that the exporters have regained, and have even enlarged further, the import volume and market shares that they had initially lost owing to the entrance onto the market of the Community industry.

(b.3) Price undercutting

(115) The Commission examined whether the exports into the Community of the product concerned from all the exporting countries concerned were at prices which undercut those prices of the Community industry during the investigation period.

(116) In order to establish a fair and feasible comparison between imports prices and the selling prices of the Community industry, distinctive criteria had to be found between all the different models of the product concerned so that they could be gathered in different baskets.

Three features were found to be the most appropriate to distinguish among the models: the cutter, the answering machine and the telephone. On this basis, eight different categories of models of personal fax machines were determined. The comparison was established only between products having the same features.

(117) The Commission made a comparison on a model-by-model basis, at the same level of trade, between the sales prices of the Community industry to the first independent customers, adjusted to an ex-warehouse level, with both sales prices of the exported models (at a CIF Community border level including customs duties) and sales prices of the related importers in the Community (also adjusted to an ex-warehouse level). The investigation conducted has established that the prices of personal faxes originating in China, Japan, Korea, Malaysia, Singapore, Taiwan and Thailand were significantly below the prices charged by the Community industry during the investigation period. Indeed, substantial price undercutting was in evidence. The weighted average undercutting margins per exporter varied from 5,1 % to 21 %.

4. Situation of the Community industry

(118) Owing to the investment made in 1993, the Community industry, between 1993 and 1994, increased its sales volume by 140 % and its market share by about 9 percentage points. By comparison, the Community consumption (in units) went up by 57,7 % in the same period.

(119) On the other hand, from 1994 to the investigation period, the sales volume of the Community industry decreased by 14,7 % and its market share decreased by 9 percentage points, whereas the Community consumption in the same period increased by 39,6 %.

(120) Consequently, the quantity produced (in units), which had increased by 158 % from 1993 to 1994, subsequently decreased by 16,6 % from 1994 to the investigation period.

(121) Production capacity utilization decreased by 33,1 % between 1993 and the investigation period.

(122) The average sales prices of the Community industry from 1993 to 1994 decreased by 16,9 %, followed by an increase of 1,5 % from 1994 to 1995 and a further decrease of 18,7 % from 1995 to the investigation period. The overall price decrease from 1993 to the investigation period amounted to 31,5 %, and the price decrease from 1994 to the investigation period was at 17,5 %.

(123) Between 1993 and the investigation period, net losses increased by 212,8 %.

(124) Employment, having been relatively stable from 1993 to 1995, decreased by 21,7 % from 1995 to 1996.

(125) The negative trend of sales volume and market shares of the Community industry in the period 1994 to 1996 thus mirrors the positive trend of the exports from the countries concerned in the same period.

5. Conclusion

(126) In the light of the foregoing, it is concluded that the Community industry suffered material injury in the period 1994 to the investigation period. This injury is reflected in a loss of sales volume, market share, production capacity utilisation, continued and increasing losses, and loss in employment. Under these circumstances, based on the negative trends of the above economic indicators, it is concluded that the Community industry has suffered material injury within the meaning of Article 3 of the Basic Regulation.

F. CAUSATION OF INJURY

(127) The Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports from the countries concerned, and whether other factors might have caused or contributed to that injury.

1. Effect of the dumped imports

(128) The increase in volume and market share of the dumped imports, which undercut the prices of the Community industry, coincided with the injury suffered by the Community industry, in particular through its substantial loss in sales volume and market share. It is considered that the exporting countries concerned have regained, by means of dumped imports, the sales volume and market share which the Community industry had originally gained following its investment in 1993. In addition, the investigation showed that the increasing volume of the dumped imports together with the downwards trend of prices led to a severe price depression for the Community industry, which had in turn to decrease its prices in order to be able to remain in the market. Despite this decrease, the prices of the Community industry in the investigation period have still been undercut by the exporters concerned.

(129) The injurious price behaviour of the exporters concerned was particularly damaging to the Community industry on account of the transparency of the consumer market which has immediate repercussions on importers and traders.

2. Effect of other factors

(130) The Commission considered whether factors other than the dumped imports concerned could have caused or contributed to the injury suffered by the Community industry.

(a) *Other imports*

(131) Particular attention was given to the question whether competition from other third countries could have contributed to the injury suffered by the Community industry. In this respect, no findings were established whereby any significant exports from any other country than those targeted in the complaint were made during the period under investigation.

(b) *Other applicable factors*

(132) The Community industry in the years 1994 and 1995 suffered financial losses due to specific difficulties with a customer-designed product which was sold to one particular client. These losses were excluded from the analysis of the profitability of the complainant since they cannot be attributed to dumped imports.

(133) Attention was also given to the question to what extent the situation of the Community industry, and more particularly its cost structure, was influenced by the fact that it entered the market relatively late — that is, only in 1991 when other competitors had already established their market presence for the product concerned. In that respect, no indications were found in the investigation that the late market entrance in general would have had, in the period 1993 to 1996, a negative influence on the economic performance of the Community industry which could be considered material. There were also no indications that the start-up costs incurred in connection with the build-up of the production capacities in 1992 and 1993 would have exceeded the level of costs which are usually being incurred. The Community industry, following its market entry in 1991, could reasonably expect to achieve satisfactory financial results in the following years provided that fair market conditions would prevail. This applies in view of its solid industrial and technological base, with regard to the comprehensive distribution network in place, and in respect of the economy of scale to be achieved as a result of increased production capacities. This expectation was also reasonable in the light of the market growth which could be foreseen. However, contrary to those expectations, the Community industry has suffered declining sales volume, loss of market shares, declining employment and profit shortfall. In conclusion, it is considered that its late market entrance has not caused material injury to the Community industry.

(134) The second largest manufacturer of the product concerned in the Community, Sagem (France), did not cooperate in this proceeding. However, available information concerning this producer showed that its market share, which had increased from 1993 to 1994, decreased considerably from 1994 to the investigation period, and that on its most important market, the company was normally charging the highest prices within any group of comparable models. Consequently, according to the information available, it appears unlikely that any material injury has been caused by this Community competitor.

3. Conclusion

(135) In these circumstances, the Commission has concluded that, for the purposes of the provisional findings, the high volume of dumped imports originating in the People's Republic of China, Japan, Korea, Malaysia, Singapore, Taiwan and Thailand taken in isolation have caused material injury to the Community industry within the meaning of Article 3 of the Basic Regulation.

G. COMMUNITY INTEREST

1. Principle

(136) Pursuant to Article 21 (1) of the Basic Regulation, the Commission examined, on the basis of all the evidence submitted, the relevant aspects for the assessment of the Community interest. In such an

assessment, special attention must be paid to the aim of anti-dumping measures, which is to eliminate the trade distorting effects of injurious dumping and to restore effective competition. In this respect, it should be noted that no personal fax machines manufactured by the Community industry during the investigation period, which could lead to the assumption that market access to those countries is impeded. The need to remove the injurious effects of the dumping is balanced by the need to assess, in cases where dumping, injury and causal link are found, whether the adoption of measures would clearly be contrary to the interest of the Community.

2. Community industry

(137) As to the potential impact of anti-dumping duties on the Community industry, it was found that this industry is structurally viable. The elimination of the injury sustained by the Community industry will allow it to make its activity profitable and to maintain its employment. According to the industry's strategy, this would be achieved primarily through increasing its sales volume, and thus its production capacity utilisation, which in turn would immediately lead to substantially lower costs of production (per unit) and to an improvement of its financial situation.

(138) The increase of sales volume by the Community industry would consequently lead to an increase of the market share of this industry. This in turn would strengthen the overall Community produced supply to the market.

3. Unrelated importers and traders

(139) Questionnaires were sent out to 33 importers (unrelated to the exporters concerned) as well as consumers and trade associations. Only 14 companies, all unrelated importers, have replied (see recital (16)); no cooperation was obtained from the European Consumer Association (BEUC) nor from the Foreign Trade Association (FTA).

(140) It has to be underlined that the cooperating companies were considerably different in terms of size and activity, some of them being big telecommunications companies, others traders in the product concerned. Overall conclusions could nevertheless be drawn from the verified data submitted by these companies.

(141) As to turnover for the producter concerned, it represented in most cases only a small part of the overall business of the cooperating companies, on average 1 % of total turnover. The average gross margin for the product concerned in the investigation period amounted to 17,8 %. As to net profitability, only five of the cooperating unrelated importers could, on the basis of their accounting system, submit net profit rates for the product concerned. For these companies, the average net profitability for personal fax machines was negative (– 1,1 %), due to low market prices in the investigation period.

(142) As regards the cooperating unrelated importers, no employment was directly related to the product concerned, since the employees in the relevant business units and retail shops were dealing with a large number of different products (and sometimes services) of data processing and telecommunication equipment, personal fax machines being only a minor part of the overall business. No significant direct investment was made in relation to the product concerned.

(143) As to the potential impact of anti-dumping duties on traders, almost all the companies explained that, due to the minor importance of the product concerned for the total business, there would be no major impact on overall sales, profits and employment.

4. Consumers

(144) As to the potential impact of anti-dumping duties on the consumer, no information was obtained by the consumer association Bureau Européen des Unions de Consommateurs ('BEUC') which, although contacted by the Commission, did not cooperate in this investigation. Most importers argued that consumer demand would decrease as a result of a price increase due to anti-dumping duties. Some companies argued that such price increase would accelerate the replacement of personal fax machines by electronic faxing (through a personal computer (PC)) or electronic mail. Others stated that, because of its ease of use and the substantially lower costs of a personal fax machine, compared to a PC (plus printer), the product concerned would in practice not be replaceable by PCs. Those parties thus argued that, in spite of a price increase, the consumer would not be deterred from buying the product concerned. These questions will be examined in more detail at the definitive stage, but for the purposes of the Commission's provisional findings, the following must be noted.

(145) On the basis of the information available at this stage, the imposition of anti-dumping duties would probably result in a significant increase in the overall volume of Community production, since it is the strategy of the Community industry primarily to increase their sales volumes (and thus to lower their unit production cost), rather than to increase their prices, in order to further improve their competitiveness. This seems to be a likely scenario, given the substantial fixed costs incurred, which were confirmed by the investigation. It appears fair to assume that this trend would be followed by the other Community producers. It is considered that the impact of anti-dumping duties on market prices would be limited, due to the fact that a substantial part of the market supply is being produced in the Community, and is thus not subject to anti-dumping measures. In the investigation period, around 35 % of the Community market was supplied from Community producers, namely from the Community industry, Sagem and producers related to Japanese exporters (which also decided not to cooperate). An estimation based on the provisional findings, in particular on the data obtained regarding production capacity and utilisation for the Community industry, allows one to assume that the market supply from all Community producers could, following the imposition of measures, increase to around 50 %. For this substantial part of the market supply no or no significant price increase can be expected.

(146) Sales on the Community market from the exporting countries concerned would, following the proposal indicated below, be subject to an average provision duty of 29 % (on the CIF Community border value). In a static scenario, the average impact on consumer prices for around 65 % of the Community market (as established for the investigation period) taking into account the common gross margins for traders and retailers as established in the investigation, would be around 20 %. However, a more dynamic and realistic analysis of the effect of provisional duties would suggest that the effect of the duties would be more moderate. The provisional anti-dumping duties for eight exporters would be between 7 % and 17 %, with an impact on consumer prices of between 5 and 11 % only. Those exporters cover approximately half of the exports concerned — around 30 % of the Community market based on the investigation period. Price increases for the exporters concerned, as a result of the provisional duties, will therefore be unavoidable. These increases will be moderate for the majority of the imports, as shown above, and more pronounced for the remaining exporters for which high dumping and injury margins were established at this provisional stage. However, this price increase should be considered in the light of the long-term advantages to the consumer, coming from the development of alternative supply sources from the Community producers of a complete range of products, including more sophisticated product types.

(147) As has already been mentioned, the European consumer association (BEUC) has decided not to cooperate in this proceeding, although it had been specifically approached by the Commission. The Commission could thus not take account of particular views and arguments which the consumers might have with regard to the impact of anti-dumping duties on the product concerned. The Commission will, prior to the conclusion of the definitive findings, take into account all comments which might be submitted by the interested parties, and in particular by consumer associations.

(148) The same would apply to any comments regarding the like product definition which could have an impact on the considerations concerning importers, traders and consumers.

5. Impact of anti-dumping duties on competition

(149) In view of the above considerations concerning the likely development of the Community market after imposition of anti-dumping duties, it is considered that such measures would not have any significant effect on the conditions of competition on this market, on which numerous operators are competing.

6. Conclusion

(150) The Commission considers that, for the purposes of the provisional findings, it is not against the Community interest to impose anti-dumping measures concerning imports of personal fax machines originating in the People's Republic of China, Japan, Korea, Malaysia, Singapore, Taiwan and Thailand.

H. PROVISIONAL DUTY

1. Methodology

(151) On the basis of the conclusions on dumping, injury and Community interest set out above, the Commission considered the level of the provisional duty to be imposed. For this purspose, account has been taken of the dumping margins found and of the amount of the duty necessary to eliminate the injury sustained by the Community industry.

(152) For the purpose of establishing the level of the injury threshold, the Commission took into account the difference in price (per unit) between the non-injurious price (namely weighted average cost of production plus 12 % profit) of the Community industry, calculated on an ex-factory basis, and the import price (duty paid) of the product concerned. It was found that a profit margin of 12 % on costs could be regarded as representing an appropriate minimum for this type of industry, and an amount which the Community industry could reasonably be expected to make in the absence of injurious dumping.

As indicated in section (b.3) above ('Price undercutting'), the comparison was made between comparable model groups, taking account of the different levels of trade. The amount of underselling was then expressed as a percentage of the CIF Community border price of the imported product.

(153) The results show considerably different injury margins for the exporters concerned. This indicates that those companies have, with regard to pricing, adopted different strategies in respect of their activities on the Community market.

(154) The comparison showed the following injury margins for each exporter/producer:

Country	Company	Injury margin (%)
Japan	— Brother Industries Ltd.	7,0
	— Tottori Sanyo Electric Co. Ltd.	28,1
	— Others	34,9
People's Republic of China	— Highsonic Industrial Ltd.	59,3
	— Murata Machinery (H.K.) Ltd.	23,5
	— Others	74,2
Republic of Korea	— Daewoo Telecom Ltd.	61,6
	— Tae II Media Co., Ltd.	50,8
	— Samsung Electronics Co., Ltd.	17,4
	— Nixxo Telecom Co., Ltd.	54,8
	— Others	73,1
Singapore	— Matsushita Graphic Communication Systems (S) Pte., Ltd.	13,5
	— Others	39,5
Taiwan	— Kinpo Electronics, Inc.	32,4
	— Sampo Corporation	35,8
	— Others	36,6
Thailand	— Cal-Comp Electronics (Thailand) Co. Ltd.	40,7
	— Others	47,3
Malaysia	— All	89,8

(155) Except for the People's Republic of China, the underselling margin for non-cooperating exporters (see above: 'Others') was based on the highest margin found for an individual model group exported by the cooperating exporters in the country concerned in representative quantities. The residual underselling margin was determined on the basis of the weighted average margin of this model group, expressed as a percentage of the CIF Community border import price. For China, the underselling margin was determined on the basis of the average underselling margin calculated for the three cooperating companies to which no individual treatment was granted, and information available to account for non-cooperation.

2. Provisional anti-dumping duty

(156) In the light of the foregoing, provisional anti-dumping duties should be imposed on the level of the dumping margins found, but should not be higher than the injury margins set out above,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of fax machines with a weight of 5 kilograms or less and with dimensions (width × depth × height) of the main body measuring 470 mm × 450 mm × 170 mm or less, with the exclusion of fax machines using ink-jet or laser printing technology, falling within CN code 8517 21 00 (Taric code 8517 21 00 10) and originating in the People's Republic of China, Japan, Republic of Korea, Malaysia, Singapore, Taiwan and Thailand.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows for products originating in:

Country	Provisional duty (%)	Taric additional code
The People's Republic of China	58,1	8900
Japan	34,9	8900
Republic of Korea	33,8	8900
Malaysia	89,8	—
Singapore	39,5	8900
Taiwan	36,6	8900
Thailand	22,0	8900

The above rates shall not apply to the products manufactured by the companies listed below, which shall be subject to the following anti-dumping duty rates:

Country	Company	Provisional duty (%)	Taric additional code
Japan	— Brother Industries Ltd.	7,0	8430
	— Tottori Sanyo Electric Co. Ltd.	28,1	8431
Republic of Korea	— Daewoo Telecom Ltd.	13,2	8434
	— Tae Il Media Co., Ltd.	9,2	8435
	— Samsung Electronics Co. Ltd.	17,4	8436
	— Nixxo Telecom Co., Ltd.	10,0	8437
Singapore	— Matsushita Graphic Communication Systems (S) Pte., Ltd.	13,5	8438
Taiwan	— Kinpo Electronics, Inc.	6,0	8439
	— Sampo Corporation	35,8	8442
Thailand	— Cal-Comp Electronics (Thailand) Co. Ltd.	9,9	8457

The above provisional duty for the People's Republic of China shall not apply to the products manufactured on behalf of the companies listed below, which shall be subject to the following anti-dumping duty rates:

Country	Company	Provisional duty (%)	Taric additional code
People's Republic of China	— Murata Machinery (H.K.) Ltd., (Hong Kong)	23,5	8458
	— Highsonic Industrial Ltd., (Hong Kong)	45,6	8459

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

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

Article 2

The Parties referred to in Article 20 (1) of Regulation (EC) No 384/96 may make their views known in writing and apply to be heard orally by the Commission within 15 days of the date of entry into force of this Regulation.

The Parties referred to in Article 21 (4) of Regulation (EC) No 384/96 may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Subject to Articles 7, 9, 10 and 14 of Regulation (EC) No 384/96, this Regulation shall apply for a period of six months unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 30 October 1997.

For the Commission

Leon BRITTAN

Vice-President