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(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 904/98
of 27 April 1998**

imposing definitive anti-dumping duties on imports into the Community of personal fax machines originating in the People's Republic of China, Japan, the Republic of Korea, Malaysia, Singapore, Taiwan and Thailand

THE COUNCIL OF THE EUROPEAN UNION,

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⁾, and in particular Article 9(4) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) Provisional anti-dumping duties were imposed on 1 November 1997 by Commission Regulation (EC) No 2140/97⁽²⁾ (hereinafter referred to as the 'provisional duty Regulation').

Following the imposition of the provisional anti-dumping duties, the Community industry, two exporters' associations, a number of producers/exporters and importers submitted comments in writing. All parties who so requested were granted a hearing.

- (2) The Commission continued to seek and verify all information it deemed necessary for the definitive findings, and carried out investigations at the premises of a number of importers related to exporters from the countries concerned. The parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the collection of amounts secured by way of the provisional duty. The parties were also granted a reasonable period

within which to make representations subsequent to the disclosures.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

- (3) The proceeding covers personal or consumer fax machines (hereinafter referred to as 'personal fax machines' or 'product concerned'). 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, they 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.
- (4) For the purpose of its preliminary findings, the Commission distinguished personal or consumer fax machines from professional fax machines by virtue of their weight and size. Only fax machines with a weight of five kilograms or less and with dimensions (width x depth x height) of the main body measuring 470 mm x 450 mm x 170 mm or less, were considered as personal or consumer fax machines for the purposes of the present investigation. For the purpose of assessing the weight and dimensions, the paper load and other consumables, as well as any cordless hand-sets, were excluded. It was furthermore considered that, at present, fax machines using inkjet or laser printing technologies are aimed only at professional use and consequently the machines using these technologies were excluded from the application of the provisional anti-dumping duty.
- (5) Personal fax machines are currently classifiable under CN code 8517 21 00.

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).

⁽²⁾ OJ L 297, 31. 10. 1997, p. 61.

1. Characteristics of professional fax machines

- (6) After the imposition of the provisional anti-dumping duties, exporters argued that, for the product definition, the criteria of weight and size were inappropriate, since they would soon lead to the inclusion of professional (office) fax machines.
- (7) However, the investigation has shown that the product definition based on weight and size did not, with respect to the investigation period, result in the inclusion of professional fax machines. Nor did any interested party claim that, between the end of the investigation period and December 1997, there were any professional fax machines available on the Community market which would come within the weight and size criteria. As to future developments, no substantiated submission was made by the interested parties, nor were any findings established in the investigation which would suggest that such professional fax machines would be introduced into the market during the period of application of anti-dumping duties. It is therefore concluded that the criteria of weight and size would not, in the near future, lead to the inclusion of professional fax machines in the scope of the proceeding.

Once such professional fax machines are introduced into the Community the Commission will, if necessary, submit a proposal to the Council in order to clarify, on an individual model by model basis, that these fax machines do not fall under this Regulation.

2. Printing technologies

- (8) It was further argued that personal fax machines using printing technologies other than thermal sensitive, (i.e. machines using thermal-transfer, inkjet, laser or LED printing technologies) should be excluded.

2.1. Thermal transfer faxes

- (9) In respect of this argument, the investigation has shown the following:

Physical and technical characteristics

- (10) In weight and size and their essential technical features, thermal transfer faxes are similar or identical to the thermal paper models. The only difference is the printing technology and, resulting therefrom, the paper used. Both thermal transfer and thermal paper technologies use heat to transfer information onto paper via a single print head. Both print heads are almost identical. It would therefore in principle be possible to print thermal

paper with a thermal transfer print head. Moreover, the electrical components to control the print heads are identical. Essential elements of the thermal printing technology are thus the basis for the newer thermal transfer technique. In that respect, it was found that thermal transfer is the result of the normal product development of thermal paper printing technology.

Use and consumer perception

- (11) Both product types have, in general, similar designs and visual aspects, and handling is simple for both. It has been shown that private users and small/home offices use both thermal paper faxes and thermal transfer faxes.

The differences in printing technology, i.e. the better printing quality of thermal transfer faxes, and the advantages of using plain paper, are taken into consideration by the consumers only as one aspect among all the technical features available. The main objective of the consumer in purchasing a fax machine remains that of obtaining a device for his personal use capable of transmitting and receiving fax messages. In comparison, the printing technology used for the two product types in question is, from the consumer perspective, just an ancillary element.

Sales channels

- (12) In the investigation period, thermal paper and thermal transfer faxes were, in general, sold through the same sales channels.

Conclusion

- (13) In view of the above, it is considered that thermal paper faxes and thermal transfer fax machines form one product.

2.2. Inkjet, laser, LED printing technologies and portable faxes

- (14) As to fax machines using inkjet, laser or LED printing technology, the definitive determinations have confirmed that these machines are, in general, substantially different to personal fax machines in respect of physical and technical characteristics (in particular in view of weight/size and performance), that they are designed for professional rather than personal use, and that they are, to a significant extent, sold through different sales channels.
- (15) In view of these differences, fax machines using inkjet, laser and LED printing technology cannot be considered as like products to the product concerned under consideration.

- (16) Some interested parties have further argued that certain new types of portable fax machines to be used in connection with mobile telephone sets which were, in the investigation period, not yet available on the Community market, would be for professional use only and should therefore be excluded from the scope of the proceeding.
- (17) On the basis of the information available, it is considered that portable fax machines, to be used only in connection with mobile phones, have different physical and technical characteristics and will indeed be for professional use only. Thus, these machines do not fall within the definition of the product concerned under consideration. Once such professional fax machines are introduced into the Community the Commission will, if necessary, submit a proposal to the Council in order to clarify, on an individual model by model basis, that these fax machines do not fall under this Regulation.

3. Conclusions

- (18) The provisional findings are confirmed, whereby the product definition shall be based on the weight and size criteria, as defined in the provisional duty Regulation.
- (19) Furthermore, it is confirmed that the product concerned, within the meaning of Article 1(4) of Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation'), is thermal paper fax machines and thermal-transfer fax machines.
- (20) Fax machines using inkjet, laser or LED printing technology, and portable fax machines to be used only in connection with mobile phones shall be excluded from the scope of the proceeding.

C. DUMPING

1. Level of cooperation

- (21) The level of cooperation by the producers/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 producers/exporters represented only a small fraction of the total exports from the countries concerned.
- (22) 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 investigation revealed that part of the information submitted was inaccurate, unsubstantiated or insufficient, and consequently it had to be disregarded. In these situations the Commission based its definitive findings on the facts available, pursuant to Article 18 of the Basic Regulation.

2. Market economy countries

2.1. Normal value

Application of Article 18(1) of the Basic Regulation

- (23) The Singapore producer/exporter contested the Commission's decision to apply facts available pursuant to Article 18(1) of the Basic Regulation for the assessment of its normal value (see recital 66 of the provisional Regulation). The company alleged that the unreported transactions made on the domestic market would be for re-export to a third country. Moreover, they claimed that, pursuant to Article 18(4) of the Basic Regulation, they should have been informed by the Commission of its decision, as no opportunity to provide further explanations was offered. The company also disputed the method used by the Commission to establish normal value on the basis of the facts available because it considered that the evidence collected on the spot (invoices referring to the unreported transactions) should have been used instead of the highest reported resale price.

The investigation revealed that the sales in question were actually made on the domestic market and had not been reported as such by the company. Moreover, the company was asked to provide evidence supporting that the sales in question were not destined for domestic consumption but were actually exported outside Singapore. Despite repeated requests, the company did not provide any evidence of a subsequent re-export to a third country. At a hearing requested by the company subsequent to the verification visit, no satisfactory explanation was provided.

- (24) Concerning the method applied by the Commission to establish normal value with regard to these transactions, the facts used to assess the normal value were verified and are reasonable in the light of the company's partial non-cooperation. The provisional findings of the Commission, as set out in recital 66 of the provisional Regulation, are therefore confirmed.
- (25) One Korean producer/exporter for which it was decided to apply facts available in order to assess its material costs, pursuant to Article 18 of the Basic Regulation (see recital 32 of the provisional Regulation) claimed that this decision was unjustified and that the costs of material, as reported in its questionnaire reply, should have been used instead. Furthermore, it considered that the method used by the Commission to adjust the normal value as a consequence of the partial non-cooperation was flawed.

- (26) The investigation revealed that the material costs reported contained serious inconsistencies and could not, therefore, be accepted. No further explanations were provided by the company justifying the inconsistencies. With regard to the methodology used to establish the facts available, it should be pointed out that a conservative approach was applied for the adjustment of material cost by using the smallest difference found between the lowest and the average material values.

Constructed normal value (SG&A)

- (27) The single cooperating Thai producer/exporter, which had no domestic sales, contested the method used to establish selling, general and administrative expenses (SG&A) and profit when constructing normal value. As stated in recital 77 of the provisional Regulation and in accordance with Article 2(6)(c) of the Basic Regulation, in the absence of any domestic sales, the Commission decided to construct normal value by adding to the company's manufacturing costs the weighted average domestic SG&A and profit established on all profitable sales of the cooperating exporters in Taiwan. The company claimed that it formed an entity with the cooperating Taiwanese producer/exporter and that in view of this relationship, SG&A and profit should have been determined on the basis of the first method set out in Article 2(6) of the Basic Regulation which would be, according to the company, the actual data pertaining to that Taiwanese company. Alternatively, should Article 2(6)(c) of the Basic Regulation be applied, the company requested that only the SG&A and profit of its related Taiwanese company should be used, due to the close links between the two.

- (28) It should be noted that, according to Article 2(6) of the Basic Regulation, SG&A expenses and profit margin to be used in a constructed value are those incurred or made on the domestic market of the exporting country, i.e. Thailand. However, in the absence of information on domestic sales of fax machines in Thailand by the company concerned or by any other company, and given that no information was available on SG&A expenses and profit of the same general category of products, as provided for under Article 2(6)(a) or (b) of the Basic Regulation, recourse had to be made to Article 2(6)(c), i.e. to base SG&A and profit on any other reasonable method. In this respect it was considered that the weighted average SG&A and profit incurred or realized by all cooperating exporters on the Taiwanese market constituted an appropriate and reasonable basis, since Taiwan is a competitive market where a substantial number of firms

operate, and constituted the best approximation available to the Commission of the conditions of sales on the Thai market for the product concerned.

- (29) To use, as suggested by the Thai producer, solely the SG&A and profit of the Taiwanese company with which it is related does not provide a more appropriate basis. Indeed, the sales of the Taiwanese related company in isolation represented a relatively small fraction of the Taiwanese market.

2.2. Comparison

Import charges

- (30) In recital 37 of the provisional Regulation the Commission stated that claims for allowances for import charges made by Korean producers/exporters were rejected since these claims were calculated on an average basis for all products and the relationship between the duty paid and the specific model of fax machine concerned was not demonstrated. Three Korean producers/exporters claimed that this decision was unreasonable. They requested that the Commission services should not insist on precise calculations by model, but instead accept an overall allocation of duties paid. Furthermore, they claimed that a duty drawback adjustment would have to be granted irrespective of the fact whether or not domestic models included parts purchased locally.
- (31) It must be stressed that it is a primary requirement for the granting of such an allowance that evidence is provided that the parts have not been purchased locally since otherwise, no import duty has been paid for such parts. In one case, the exporter was able to demonstrate, at least in part, to the satisfaction of the Commission that the adjustment was justified. The adjustment was made only to the extent that the claim was demonstrated.

Level of trade

(a) Difference in the functions performed

- (32) The two Japanese and the Singapore producers/exporters, as well as one of the Korean companies claimed a domestic allowance for differences in level of trade based on Article 2(10)(d) of the Basic Regulation, which has been provisionally rejected on the grounds stated in recitals 49 and 71 of the provisional Regulation. The companies objected to this position, reaffirming that the difference in functions performed domestically and on the export side would automatically correspond to a

different level of trade and that, therefore, an adjustment should be granted to allow a proper comparison between normal value and export price. In support of their argument, the companies claimed that, when constructing the export price pursuant to Article 2(9) of the Basic Regulation, it is the Institutions' policy to deduct all the costs, incurred by the related importers in the Community from the price paid to the first independent customer thus bringing the export price to an ex-factory level. Hence, they state that, in order to obtain a normal value at a comparable level of trade, the same categories of expenses which are incurred on the domestic market, plus a corresponding profit based on that obtained on domestic sales should also be excluded, pursuant to Article 2(10)(d) of the Basic Regulation.

(33) This argument cannot be accepted, since it ignores an essential requirement of the Basic Regulation in that respect, i.e. that the levels of trade at which the sales are performed domestically and on the export market must be defined by the claimant, and in particular how this eventual difference affects price comparability.

(34) It should be recalled that the Institutions' practice to reconstruct the export price by deducting the costs incurred by the related importers from the price to unrelated importers brings the Community border price to the level of a sale to an independent customer. Since, in the present case, the resale price from the related importers to the independent customers was found mainly to be at the level of prices charged to large retailers and distributors, a deduction of the importers' expenses in selling to such customers results in a price which is at a level further up in the sales chain. It is appropriate to consider the export price after reconstruction equivalent to a price charged to a distributor.

(35) As to the companies' claim that, because costs were deducted to reconstruct the export price a similar deduction should be made to the domestic price, this is considered per se not warranted. Since in the present case the reconstruction of the export price led to a level of trade corresponding to that of a distributor, this corresponded to the domestic level of trade. The fact that certain costs may be incurred on the domestic market in selling to distributors which are not incurred in the similar export level is linked to the specific structure or circumstances of the markets under consideration, but could not per se lead to an adjustment when it is clear that prices

are made to similar types of customers, i.e. distributors.

(36) The Japanese and Korean companies claimed that the average domestic price cannot be used as a normal value because these sales took place at several different levels of trade, only one of which corresponded to the export level. The Commission examined the situation in detail but was unable to conclude that the exporters' claim was substantiated in that no clear breakdown could be provided by the companies either in terms of different costs or prices to demonstrate such different levels domestically. What the Commission was able to establish, in contrast, was that the prices to all domestic clients were approximately the same to the various groups of customers, a factor which suggested that levels of trade were not different. In any event, given that domestic prices to all groups of customers were similar, and given that one group of these corresponded to the level of trade of the export customers (distributors), a level of trade adjustment was not justified. Normal value would be the same whether based on sales to one group or to all customers.

(37) In the case of Singapore, domestic sales were allegedly all made to a single level of trade, i.e. distributors. It must be recalled that normal value was established pursuant to Article 18(1) of the Basic Regulation, due to the company's omission to report a substantial number of domestic transactions of the product concerned, which prevented a more detailed verification of the domestic levels of trade. On the basis of the information available to the Commission, no difference was found between domestic and export levels of trade.

(38) For the above reasons, normal value was established on the basis of all domestic sales and it was considered that the adjustments for differences in level of trade as requested by the Japanese, Singapore and Korean producers/exporters were not justified.

(39) Nevertheless, in circumstances not covered by an adjustment for differences in levels of trade as defined by Article 2(10)(d)(i) of the Basic Regulation, Article 2(10)(d)(ii) allows the granting of a special adjustment when certain functions are shown to relate to a level of trade other than the one used for the comparison. In the present case, the investigation revealed that while the adjustment for differences in levels of trade could not be granted, the function of advertising should receive

a special consideration in the light of Article 2(10)(d)(ii). The Commission examined, in particular, whether the companies concerned incurred advertising expenses to encourage sales at levels of trade other than the one used for the comparison. It was found indeed that, for the companies concerned, certain advertising expenses related, in the present case, to a level of trade other than the one used in the comparison. In consequence, it was decided pursuant to Article 2(10)(d)(ii) of the Basic Regulation, to exclude from the computation of the normal value those advertising expenses incurred in domestic sales which relate to a level of trade other than distributors.

(b) OEM sales

- (40) One producer/exporter in Taiwan, one in Thailand and two in Korea disputed the rejection of their claim for an adjustment for differences in levels of trade based on OEM (Original Equipment Manufacturer) export sales.
- (41) The requested level of trade adjustment could not be granted since no clear price pattern could be established between the alleged sales channels. In certain cases, prices for OEM models were found to be higher than for own brand sales. In the case of one Korean company it was also found that the customer classification given was inaccurate and therefore had to be disregarded. In the Taiwanese market, OEM domestic sales did not reveal any consistent price difference compared to own brand sales.
- (42) In the case of the Thai producer, which had no domestic sales and exported only on an OEM basis, normal value was constructed using the average SG&A and profit of the Taiwanese market, for which, as explained above, no adjustment of this nature was required. Consequently, the claim is rejected.

Commissions

- (43) The Thai company disputed the fact that a 5 % commission had been deducted from the price to the first independent purchaser in the Community to account for the participation of its Taiwanese related company in these transactions. According to them only directly related selling expenses should be deducted and, therefore, there would be no legal basis to apply this 5 % commission which was allegedly not actually incurred.
- (44) The investigation confirmed that all exports by the Thai producer/exporter to the Community were made via a related company in Taiwan. It has been determined that because of the relationship between the two companies, the transfer prices

charged by the Thai producer to the related Taiwanese company were not on an arm's-length basis. It was verified on the spot that there was a mark-up between the transfer price and the price paid by the first independent customer in the Community. This difference was intended, at least partially, to cover the costs incurred by the related company for the activities performed for the purpose of exporting the product concerned. As the related Taiwanese company's functions can be considered similar to those of a trader, 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/exporter.

- (45) One company in Singapore claimed an adjustment for commissions paid to related companies in Japan. This claim was already rejected on the grounds stated in recital 73 of the provisional Regulation. The company objected to this position reaffirming that the adjustment was needed because of the significant role played by two Japanese related companies both in the production and the marketing of the product concerned in Singapore.
- (46) The issue was re-examined. The investigation established that the amount claimed related in fact to royalties and profit transfers which the two related Japanese companies received. Such payments cannot be considered as commission payments within the meaning of Article 2(10)(i) of the Basic Regulation. Consequently, the request for an adjustment had to be rejected.
- (47) However, with regard to export sales, it was found that the Japanese companies entirely managed such sales. The function of the Singapore company was limited to invoicing the goods and to arranging the shipping. Therefore, since the related companies' functions can be considered similar to those of a trader, an adjustment of 5 % was deducted from the price to the first independent customer in the Community, in order to account for their involvement in the selling and administrative activities of the Singapore producer. The level of the adjustment was determined at 5 % since the actual expenses incurred by the Japanese related companies were not reported in the reply to the questionnaire, although this was specifically requested, and consequently could not be verified on the spot.

Credit costs

- (48) In recital 39 of the provisional Regulation it was stated that the allowances claimed for credit cost by all Korean companies were rejected since the claims were made on the basis of a so-called

'open account', i.e. a revolving payment system, without evidence of an agreement between supplier and buyer of the product at the date of sale. Three Korean producers/exporters claimed that this would not be in line with traditional Commission practice. On this basis, a credit cost adjustment to normal value representing at least a credit period of 30 days should have been granted.

- (49) It is the Institutions' practice to accept an allowance for credit costs where the exporter shows that the payment terms were a factor taken into account in the determination of the prices charged, in accordance with Article 2(10)(g) of the Basic Regulation. An adjustment will therefore only be granted for the number of days shown to be agreed at the date of the sale, as only the expenses relating to that number of days can be considered to have influenced the price. Such an agreement does not exist where payments were made on an open account basis and consequently the claim could not be accepted.

Warranty costs

- (50) One Korean producer/exporter claimed that a more reasonable estimate of an allowance for differences in warranty costs should be made by including certain expenses allegedly incurred in fees paid to independent agents and salaries paid to repairmen.
- (51) The investigation revealed that the reported warranty expenses for the domestic market were overstated and consequently that they were an unreliable basis to the assessment of the adjustment. For the provisional determination it was decided to base the allowance for warranty costs only on the actual costs incurred for providing customers free of charge with spare parts. In the absence of any new evidence which could justify an increase of the allowance for warranty expenses the provisional findings are hereby confirmed.

Other factors

- (52) A Taiwanese company repeated its request for a specific allowance to be made pursuant to Article 2(10)(k) of the Basic Regulation, by deducting salesmen's salaries, advertising expenses and rent from normal value, since it considered that most of the expenses incurred with these functions related to domestic sales.
- (53) The Japanese and Singapore producers/exporters also requested, as an alternative, in case of rejection of the claim for a level of trade adjustment (see *supra*), that other specific allowances — such as

salesmen's salaries, advertising expenses, etc. — should be deducted from normal value. The Singapore company objected to the rejection of this claim (see recital 72 of the provisional Regulation) claiming that the request for evidence on the difference in prices paid by the customers on the domestic market provided in Article 2(10)(k) is merely provided as an example, and therefore is not imperative.

- (54) All companies which made the claim under Article 2(10)(k) of the Basic Regulation, failed to provide evidence of significant and consistent price differences as required by that provision. To show only a difference in costs between the export and the domestic sales departments of the same company is an insufficient basis for a claim for differences in price comparability, let alone to demonstrate an impact on prices. Furthermore, the assumption that the request for a difference in prices is given as an example is incorrect, since subparagraph (k) reinforces the two requirements set in the general part of Article 2(10) of the Basic Regulation, i.e. that the adjustments listed in (a) to (k) can only be granted if it is claimed and demonstrated that they affect prices and price comparability. In the absence of any evidence showing that these conditions were met in this specific case, the claim had to be rejected.

3. Non-market economy countries

3.1. Individual treatment

- (55) The companies to which individual treatment was not granted, contended that the provisional Regulation was inadequately motivated in this respect. Furthermore, they reiterated their request for individual treatment on the grounds that they were independent from the control of the Chinese State.
- (56) It should be noted that, pursuant to Article 9(5) of the Basic Regulation, a single countrywide duty is established for non-market economy countries. The granting of individual treatment to certain exporters remains consequently an exception to the rule. Each producer/exporter who wishes to benefit from this exception has to demonstrate the absence of interference by the State. Two of the Chinese producers were able to demonstrate that they fulfilled all the criteria to obtain individual treatment. In relation to the three remaining Chinese producers such independence was not demonstrated by the companies, therefore the Institutions had no option but to apply them the countrywide duty.

3.2. Model comparison

- (57) Chinese producers/exporters contested the fact that normal value was partially based on models of a Korean producer in respect of which Article 18 of the Basic Regulation was applied. These exporters claimed that the use of a normal value found for a non-cooperating company would be unfavourable to them.
- (58) The issue was re-examined and, given that Article 18 of the Basic Regulation was applied to the establishment of normal value, these models were finally excluded from the calculation.
- (59) One of the Korean companies with production both in China and Korea contended that the normal value for one of their China-produced models should have been established by reference to the constructed value of the same model produced by it in Korea.
- (60) The request has been rejected since facts available were applied on the basis of Article 18 of the Basic Regulation to establish the normal value of the related Korean producer/exporter, and, as explained above, these models have been excluded from the determination of the Chinese normal value. Furthermore, it must be stressed that normal value should be based on data obtained in the analogue country as a whole, if possible, and not only on sales of one particular producer.

3.3. Comparison

Level of trade

- (61) Chinese producers/exporters continued to request an adjustment for differences in levels of trade on the grounds that their export sales were made to OEMs.
- (62) As described above, an analysis of Korean domestic sales prices of OEM sales and sales of own-brand product showed that any difference in levels of trade in this respect was not reflected in consistent and distinct differences in prices. In the absence of price differences between OEM sales and own-brand sales in Korea and since the Chinese normal value has been based on the Korean domestic market, there were no grounds to make an adjustment.

Commissions

- (63) Three Japanese companies are involved in the proceeding concerning China since they exported fax machines of Chinese origin to the Community. Their fully owned subsidiaries in Hong Kong

appeared to have either a subcontracting agreement with a Chinese company for production (or assembly) in China or a company set-up (legal entity) in China. In the provisional calculation a mark-up for the activities performed in Hong Kong and Japan was deducted in the form of commission. The Chinese producers/exporters claimed that this deduction of 5 % from the export price was not correct since this would not relate to an actual commission payment.

- (64) As the related Japanese companies' functions can be considered similar to those of a trader acting on a commission basis, an adjustment of 5 % has been deducted from the price to the first independent customer in the Community. This figure is considered reasonable given the degree of the related companies' involvement in the selling and administrative activities of the Chinese producers.
- (65) Article 2(10)(i) of the Basic Regulation provides that an adjustment has to be made for differences in commissions paid in respect of the sales under consideration. In this respect, it should be stressed that it makes no difference if the producer/exporter invoices directly its customer in the Community and pays a commission to the parties involved in arranging the sales transaction or if the producer/exporter invoices the intermediary which in turn invoices to the customer in the Community. The latter arrangement is merely a different way of ensuring that the intermediary receives its commission. In accordance with the Council's and the Commission's consistent practice, the claim could not, therefore, be accepted.

4. Dumping margin for companies investigated

4.1. Dumping margin for cooperating companies

- (66) According to Article 2(11) of the Basic Regulation, the dumping margin was established on the basis of a comparison of a weighted average normal value with a weighted average export price of all export transactions to the Community.

4.2. Dumping margin for non-cooperating companies (residual dumping margin)

- (67) In the absence of any comments by the interested parties it is decided to apply the method set out in recital 28 of the provisional Regulation, i.e. 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 at the Community border.

4.3. Dumping margins

Republic of Korea

- (68) For the cooperating producers/exporters the definitive dumping margins, expressed as a percentage of the cif import price at the Community border, are:

Samsung Electronics Co., Ltd, Seoul	19,8 %
Daewoo Telecom Ltd, Seoul	11,6 %
Nixxo Telecom Co., Ltd, Seoul	7,5 %
Tae II Media Co., Ltd, Seoul	9,2 %.

- (69) The residual dumping margin for Korea, expressed as a percentage of the cif import price at the Community border, is 25,1 %.

Japan

- (70) For the cooperating producers/exporters the definitive dumping margins, expressed as a percentage of the cif import price at the Community border, are the following:

Brother Industries Ltd, Nagoya	49,2 %
Tottori Sanyo Electric Co., Ltd, Tottori	124,2 %.

- (71) The residual dumping margin for Japan, expressed as a percentage of the cif import price at the Community border, is 130,2 %.

Taiwan

- (72) For the cooperating producers/exporters the definitive 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 %.

- (73) The residual dumping margin for Taiwan, expressed as a percentage of the cif import price at the Community border, is 60,8 %.

Singapore

- (74) For the cooperating producer/exporter the definitive 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	30,1 %.
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- (75) The residual dumping margin for Singapore, expressed as a percentage of the CIF import price at the Community border, is 68,2 %.

Thailand

- (76) For the cooperating producer/exporter the definitive 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	10,4 %.
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- (77) The residual dumping margin for Thailand, expressed as a percentage of the cif import price at the Community border, is 22,6 %.

Malaysia

- (78) The residual dumping margin for Malaysia, expressed as a percentage of the cif import price at the Community border, is 124,2 %.

The People's Republic of China

- (79) The definitive dumping margin for China, expressed as a percentage of the cif import price at the Community border, is 51,6 %.

- (80) The definitive dumping margins for the companies which received individual treatment, expressed as a percentage of the cif import price at the Community border, are as follows:

Murata Machinery (HK) Ltd, Hong Kong (products originating in China):	21,2 %
Highsonic Industrial Ltd, Hong Kong (products originating in China):	23,2 %.

D. COMMUNITY INDUSTRY

- (81) After the imposition of provisional anti-dumping duties, some interested parties have claimed that the complainant Community producer should not be considered as the 'Community industry', in view of the non-cooperation of the second large Community producer. However, in the investigation it was determined that the complainant Community producer represents a major proportion of the total Community production, pursuant to Article 4(1) of the Basic Regulation. This producer is thus considered as the Community industry for the purpose of this proceeding.

E. INJURY

1. Cumulative assessment of the effects of the dumped imports

- (82) The Japanese exporters have argued that the Commission should not assume non-cooperation with regard to around 10 Japanese fax producers, which had refused to cooperate with the Commission in this proceeding and had not replied to the questionnaires sent to them by the Commission's services, because these companies allegedly ceased exports to the Community prior to the investigation period. The import trends for Japan should be based on the data submitted by the Japanese Manufacturers' Association (CIAJ) for these non-cooperators in the course of the proceeding, and on the data submitted by the two cooperating Japanese exporters. These data would show a significant decline of Japanese imports from 1993 to 1996. In view of these trends, imports from Japan should be decumulated.
- (83) An exporter of Chinese products argued that the Chinese exports should have been decumulated, since Chinese exporters have focused on OEM customers, whereas the other exporting countries have aimed at the consumer market. This exporter also claimed that different injury margins were found and different pricing strategies would have been applied by the exporters from different countries. This would justify decumulation, since it would indicate a lack of competition between these products.
- (84) Furthermore, exporters have argued that the Japanese and Singapore average prices were between 40 % and 48% higher than the overall average for all exporting countries concerned. This would justify decumulation for these countries, since it would indicate that the products did not compete with those of the other exporting countries concerned.
- (85) The conditions to cumulate imports for the purpose of the injury determination, pursuant to Article 3(4) of the Basic Regulation, are as follows:
- (a) the dumping margins established in relation to each country are more than *de minimis* as defined in Article 9(3);
 - (b) the volume of imports from each country is not negligible; and

(c) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.

1.1. Dumping margins

- (86) As outlined above, the dumping margins found for each of the exporting countries are more than *de minimis* within the meaning of Article 9(3).

1.2. Import volumes

- (87) With respect to import volumes from Japan, in the absence of reliable, verified data from all Japanese exporters, they are, for the purpose of the definitive findings, established on the basis of Eurostat data. Since Eurostat data do not distinguish between business and personal fax machines, the import volume of personal fax machines was determined by applying the ratio between business and personal fax machines of Japanese origin established during the investigation for cooperating unrelated importers and importers related to Japanese exporters. This indicated, for the parties concerned, that 41,1 % (in units) of all fax machines of Japanese origin sold in the Community in the investigation period were personal fax machines. The import volume for Japan for the period under consideration was thus determined to be equal to 41,1 % of the total imports from Japan as reported by Eurostat.
- (88) Indeed, the Japanese import volumes cannot be based on the data submitted by the CIAJ since a substantial part of this data refers to non-cooperating Japanese exporters which refused to reply to the questionnaires sent to them by the Commission's services and thus prevented the Commission from obtaining and verifying the relevant data. Furthermore, no evidence has been submitted to show that no imports of personal fax machines other than those of the two cooperating Japanese exporters have taken place during the investigation period. These exporters have thus failed to prove the alleged strongly declining export trends.
- (89) Therefore the provisional determinations are confirmed, whereby the import volumes from Japan have to be established on the basis of facts available, pursuant to Article 18 of the Basic Regulation.
- The import volumes thus established for the Japanese exports remain significant.

1.3. Conditions of competition

Sales channels

- (90) With respect to the argument that Chinese exporters focused on OEMs and that the sales channels thus had to be considered as being different, there was substantial non-cooperation from Chinese producers. Therefore, no general conclusions in respect of Chinese exports can be drawn from the situation of the cooperating exporters only. Furthermore, the Commission has established that most cooperating parties from all exporting countries concerned sell the product concerned in the Community to several categories of customers, including OEM customers.

- (91) This also applies to the Community Industry. The proportion of sales to the various categories of customers is naturally different. However, this does not change the fact that these parties compete with each other, and there would be no justification, even had there been full cooperation, to decumulate the Chinese exports on these grounds.

Prices

- (92) With respect to the argument concerning higher prices for Japanese and Singaporean imports, the Commission has established that Japanese and Singaporean personal fax machines imported into the Community have, in general, a higher number of technical features and are more at the high end of the product range than those from the other exporting countries. Therefore, it is normal that the average import prices for these two countries are higher. Nevertheless, Japanese and Singapore products did compete with those of the other exporting countries which also exported, though to a lesser extent, high-end product types, and they competed with those of the Community Industry, which is shown by the fact that they have identical or similar physical and technical characteristics, that they serve the same use, and that they were sold through the same or similar sales channels.

Although the Singaporean and Japanese exporters have, overall, not or not significantly undercut the sales prices of the Community Industry (see recitals 98 and 99), the falling export prices from Singapore and Japan had a price-suppressing effect which had the result that the Community Industry was not in a position to raise its prices to a profitable level.

Therefore, the conditions of competition are similar.

1.4. Conclusions

- (93) In view of the above, the conclusions of the provisional findings are confirmed, whereby the conditions to cumulate imports for the purpose of the injury determination, pursuant to Article 3(4) of the Basic Regulation, are fulfilled.

2. General injury factors

General remark

- (94) On the basis of the representations received after the imposition of provisional measures and further investigations, a number of the general injury factors have now been definitively established.

Consumption

- (95) After the imposition of the provisional anti-dumping duties, the consumption in the Community is now established as follows.
- (96) It grew from around 1,1 million units in 1993 to 2,5 million units in 1996 (investigation period), an increase of around 130 %.

Cumulated volumes, market shares

- (97) Furthermore, the following trends were established for the cumulated imports from the countries concerned:
- (i) In the period 1993 to 1994, the exporting countries increased their sales volume by 33,7 %, but their market shares decreased by 11,4 percentage-points (from 62,5 % to 51,1 %).
 - (ii) In the period 1994 to 1996, the import volume of the exporting countries increased by 76,9 %, and their market shares went up from 51,1 % to 64,3 %, i.e. by 13,2 percentage-points.

Prices

(a) Price undercutting

- (98) After the imposition of the provisional anti-dumping duties, it was established that there was no price undercutting for the (only) exporter from Singapore.
- (99) For the other cooperating exporters, the provisional findings are confirmed whereby price undercutting was found for the model groups on which the determination was based. The undercutting

margins established per model group range between 1,3 % and 41,8 %. The weighted average undercutting margin in relation to the total imports per country are definitively determined as follows: People's Republic of China 18,5 %, Japan 0,3 %, Taiwan 4,5 %, Singapore 0,0 %, Korea 9,2 %, Thailand 10,9 % and Malaysia 41,8 %. The weighted average undercutting margin for all countries concerned is 8,4 %.

(b) Sales prices

- (100) In the period 1993 to 1994, the sales prices of the cooperating exporters decreased on average by 11 % and, between 1994 and 1996, the decrease amounted to 26,1 %, on average. The Japanese and Singaporean exporters also showed decreasing price trends in this period.

3. Situation of the Community Industry

- (101) On the basis of the comments received after imposition of the provisional anti-dumping duties and further investigations, the following was established:
- (102) In the period 1993 to 1994, the Community industry's sales volumes rose by 140 % and the market shares went up by 7,7 percentage-points (from 16,3 % to 24 %). This positive development was based on the investment made in 1993.
- (103) On the other hand, in the period 1994 to 1996, the sales volume of the Community industry decreased by 14,7 % and its market share decreased from 24,0 % to 14,5 %, i.e. by 9,5 percentage-points.
- (104) In the period 1994 to 1996, the quantities produced and the production capacity utilisation decreased substantially as a result of decreasing sales volumes and sales prices decreased by 17,5 %. In the same period, employment fell by 21,7 %. In the same period, the financial results decreased and, in the investigation period, showed a two-digit loss (%) on turnover. The Community industry was not in a position to increase its prices to a profitable level, due to the price depression on the Community market.

4. Conclusions

- (105) In the light of the above, it is concluded that the Community industry has suffered material injury.

F. CAUSATION OF INJURY

1. Dumped imports

- (106) The penetration of the Community market by imports at dumped prices sold through the same distribution channels and into the same (transparent) market, coincided with a loss of market shares and a deterioration of the financial situation of the Community Industry. This industry, throughout the investigation period, sold at prices substantially below cost of production. It had not been in a position to increase its prices to a profitable level due to the price suppression on the market. The price-suppressing effect was caused by the undercutting exporters and by the Japanese and Singaporean exporters taken together, the latter's export prices also showing a continually decreasing trend. Therefore, the Community Industry had to face, at the same time, dumped imports from Japan and Singapore for products that were generally in the higher segment of the market, and dumped imports from the other exporting countries, concerning more the lower segment of the market where competition is mainly led by price.

2. Other factors

- (107) After the imposition of provisional anti-dumping duties, it was argued that the injury suffered by the Community industry might have been caused by Sagem, the second largest Community producer.
- (108) In this respect, data obtained during the investigation indicates that Sagem's market share, which had increased from 1993 to 1994, considerably decreased between 1994 and the investigation period. Furthermore, statistical information indicates that on Sagem's main market (France), this company normally charged the highest prices within a group of comparable models. On the basis of this information, it is considered unlikely that Sagem has to any significant extent contributed to the injury suffered by the Community Industry.
- (109) With respect to imports from countries not subject to the investigation, the provisional findings had established that there were, in the investigation period, no significant imports. No substantiated comments were raised in this respect.

3. Conclusions

- (110) In the light of the above, it is considered that the dumped imports from the exporting countries concerned have caused material injury to the Community Industry.

G. COMMUNITY INTEREST

- (111) After the imposition of provisional anti-dumping duties, it was argued that anti-dumping duties would unduly burden consumers and thus be against the Community interest. In consequence, further investigations have been undertaken and the following findings have been established.

1. Community industry and other Community producers

- (112) It was established in the investigation that the Community Industry is viable, which is, *inter alia*, shown by continued investment and the development of its own plain-paper (thermal-transfer) personal fax machine which will shortly be introduced into the market. It can be expected that this industry would discontinue its activities in the Community if no measures against dumping were taken, in view of the magnitude and duration of financial losses suffered due to dumped imports. Without measures, the price-depressive effect of the dumped imports would continue and frustrate all efforts of the Community industry to become profitable. As a result, around 370 jobs directly linked to the product concerned would be lost in the Community. On the other hand, the imposition of measures would enable this industry to maintain and even develop its activities in the Community.
- (113) Furthermore, it is considered that the imposition of anti-dumping duties is likely to positively affect directly and indirectly around 4 000 jobs, i.e. around 1 000 employees within all Community producers (Philips, Sagem and the Japanese transplants), and indirectly a further 3 000 jobs in the area of manufacturing-related servicing/supply (based on industry evaluations for this sector that one industrial employment would entail at least three support jobs).

2. Unrelated importers/traders

- (114) The investigation has shown that, for unrelated importers and traders, the product concerned represented, in general, only a small part of the overall business, on average 1 % of total turnover. For the cooperating importers, no employment and no significant investment was directly related to the product concerned. All but one of these companies explained that anti-dumping duties would not have

a major impact on overall sales, profits and employment.

3. Consumers

- (115) On the basis of the definitive anti-dumping duties imposed, the average consumer price increase, for products imported from the countries concerned, would be around 12 %, based on the assumption that exporters subject to high anti-dumping duties, i.e. duties between 40 % and 89 %, would discontinue their exports to the Community market, whereas the remaining exporters would continue selling on the Community market. The individual price increase for exporters subject to anti-dumping duties below the average, accounting for around 70 % of the exports from the countries concerned, would even be lower, namely between 3 % and 9 %. For a product with a useful lifetime of around 5 years, the average yearly charge due to anti-dumping duties would thus be around ECU 6. These relatively minor charges would still be partly neutralised by the normal price decreases for the product concerned.
- (116) Apart from the abovementioned price increases for imported products, the consumer will be able to rely on a growing market supply from all Community producers. It can be expected that the market share of all Community producers would rise from around 35 % in 1996 to around 50 % after the imposition of anti-dumping duties. These Community producers are likely to keep their prices stable, in order to obtain the benefits of higher market shares and sales volumes which, in turn, would lead to reduced per-unit-costs and improved financial results.
- (117) The European consumers' association (BEUC), although invited to do so, did not participate and did not submit comments.
- (118) In view of the above, it is considered that the charge to the consumers as a result of anti-dumping duties for personal fax machines imported from the countries concerned, is moderate compared to the benefits of securing the continuation of industrial activities and employment requiring high qualifications in the Community.

4. Information society

- (119) It was argued that the imposition of anti-dumping duties would affect the development of the Information society.

- (120) In this respect, it is explicitly stated in the 1996 Singapore Agreement on information technology products that this Agreement does not in any respect interfere with the right to impose anti-dumping measures, where applicable. Furthermore, it is considered that the small impact on the consumers, as indicated above, will not negatively influence the demand for the product concerned.

5. Impact of anti-dumping measures on competition

- (121) The imposition of anti-dumping duties on those exporters for which high dumping and injury margins were established, and whose exports would be subject to high anti-dumping duties, is likely to lead to a drop in sales volume and market share for these parties. However, for the majority of exporters concerned the impact of the duties will be moderate and it is not expected that these exporters would be significantly affected in respect of their competitive situation. Therefore, there will be still a considerable number of strong competitors of the Community producers on the market.

6. Conclusions

- (122) In the light of the above, it is considered that there are no compelling reasons against the imposition of anti-dumping duties.

H. DEFINITIVE DUTY

1. Injury margins

- (123) For the purpose of determining what level of duty would be necessary to remove the injury caused to the Community Industry by the dumped imports, it was considered that a price level based on the

Community Industry's cost of production plus a reasonable profit should be calculated. A profit margin of 10,7 % on turnover was regarded as an appropriate minimum. It is also considered that, as to its present and future situation, there is and will be a need for intensive and increased R&D efforts, in particular in view of further miniaturisation and future product generations adapted to new developments in telecommunications technology. In addition, the above profit margin is sufficient to provide the resources for the investment necessary to produce the new product types and to provide a reasonable return on the capital already invested.

- (124) Furthermore, it is considered that this profit margin is in line with the profit margins found for sales of the exporters concerned on their domestic markets, and it is also in line with the profit margins used in past anti-dumping cases for similar industries (e.g. cases concerning small screen CTVs, audio cassettes, video cassette tapes, magnetic discs, aluminium electrolytic capacitors, TV camera systems: profit rates between 10 and 12 % on turnover were used in these cases).

- (125) The injury elimination level was calculated by comparing the weighted average import price, duly adjusted for differences concerning payment and delivery terms, and on the same level of trade, with the non-injurious price of the Community Industry, established as indicated above. The amounts resulting from this calculation were expressed as a percentage of the weighted average, free-at-Community-border value of the imported goods. The injury margins determined on that basis are as follows:

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, Hong Kong	59,3
	Murata Machinery Ltd	23,5
	Others	74,2
Korea	Daewoo Telecom Ltd	61,6
	Tae II Media Co. Ltd	50,8
	Samsung Electronics Co. Ltd	17,4
	Nixxo Telecom Ltd	54,8
	Others	73,1

Country	Company	Injury margin (%)
Singapore	Matsushita Graphic Communication Systems (S) Pte Ltd	7,7
	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 (no-cooperation)	89,9

2. Definitive duties

- (126) The definitive anti-dumping duties are set at the level of the dumping margins found, or at the level of the injury margins, if the latter are lower. These duties, expressed as a percentage of the free-at-Community-border prices, amount to:

Country	Company	Definitive duty (%)
Japan	Brother Industries Ltd	7,0
	Tottori Sanyo Electric Co., Ltd	28,1
	Others	34,9
People's Republic of China	Highsonic Industrial Ltd, Hong Kong	23,2
	Murata Machinery Ltd	21,2
	Others	51,6
Korea	Daewoo Telecom Ltd	11,6
	Tae II Media Co., Ltd	9,2
	Samsung Electronics Co., Ltd	17,4
	Nixxo Telecom Ltd	7,5
	Others	25,1
Singapore	Matsushita Graphic Communication Systems (S) Pte Ltd	7,7
	Others	39,5
Taiwan	Kinpo Electronics Inc.	6,0
	Sampo Corporation	35,8
	Others	36,6
Thailand	Cal-Comp Electronics (Thailand) Co., Ltd	10,4
	Others	22,6
Malaysia	All (no-cooperation)	89,9

I. COLLECTION OF THE PROVISIONAL DUTIES

- (127) In view of the magnitude of the dumping margins found for the exporting producers and countries, and in the light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duties for transactions involving the product concerned should be definitively collected at the level of the definitive duties,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of fax machines with a weight of five kilograms or less and with dimensions (width x depth x height) of the main body measuring 470 mm x 450 mm x 170 mm or less, except for such fax machines using inkjet or laser or LED (Light Emitting Diode) 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 definitive anti-dumping duty applicable to the net, free-at-Community-border price, before duty, shall be as follows for products originating in:

Country	Definitive duty (%)	Taric additional code
The People's Republic of China	51,6	8900
Japan	34,9	8900
Republic of Korea	25,1	8900
Malaysia	89,8	—
Singapore	39,5	8900
Taiwan	36,6	8900
Thailand	22,6	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	Definitive duty (%)	Taric additional code
The People's Republic of China	— Murata Machinery (HK) Ltd (Hong Kong)	21,2	8458
	— Highsonic Industrial Ltd (Hong Kong)	23,2	8459
Japan	— Brother Industries Ltd	7,0	8430
	— Tottori Sanyo Electric Co., Ltd	28,1	8431
Republic of Korea	— Daewoo Telecom Ltd	11,6	8434
	— Tae II Media Co., Ltd	9,2	8435
	— Samsung Electronics Co., Ltd	17,4	8436
	— Nixxo Telecom Co., Ltd	7,5	8437

Country	Company	Definitive duty (%)	Taric additional code
Singapore	— Matsushita Graphic Communication Systems (S) Pte Ltd	7,7	8438
Taiwan	— Kinpo Electronics, Inc.	6,0	8439
	— Sampo Corporation	35,8	8442
Thailand	— Cal-Comp Electronics (Thailand) Co., Ltd	10,4	8457

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

Article 2

Where necessary the Council will, upon a proposal from the Commission, clarify on an individual model by model basis which professional fax machines falling within the weight and size criteria as provided for in Article 1, or being portable fax machines to be used only in combination with a mobile telephone set, are not covered by this Regulation.

Article 3

1. The amounts secured by way of provisional anti-dumping duty under Commission Regulation (EC) No 2140/97 shall be definitively collected at the rate definitively imposed.
2. Amounts secured in excess of the definitive rate of anti-dumping duty shall be released.

Article 4

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

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

Done at Luxembourg, 27 April 1998.

For the Council
The President
R. COOK