

COUNCIL REGULATION (EEC) No 3651/88

of 23 November 1988

imposing a definitive anti-dumping duty on imports of serial-impact dot-matrix printers originating in Japan

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Whereas :

A. Provisional measures

- (1) The Commission, by Regulation (EEC) No 1418/88⁽²⁾, imposed a provisional anti-dumping duty on imports of serial-impact dot-matrix printers originating in Japan. That duty was extended for a maximum period of two months by Regulation (EEC) No 2943/88⁽³⁾.

B. Subsequent procedure

- (2) Following the imposition of the provisional anti-dumping duty, all exporters and a number of independent importers as well as the complainant Community industry requested, and were granted, an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.
- (3) Upon request, parties were also informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which they could make representations subsequent to the disclosure given. Their comments were considered and, where appropriate, the Commission's findings were adjusted to take account of them.
- (4) In addition to the investigations leading to the preliminary determinations, the Commission carried out further investigations at the premises of all the complainant companies.

C Product under consideration and like product

- (5) In its provisional findings, the Commission concluded that the products under consideration are serial-impact dot-matrix printers which print dots by electronically activated needles on a print medium (SIDM printers). Further, the Commission found that all Community-produced SIDM printers form one like product to all SIDM printers exported from Japan, with the exception of special purpose printers (recitals 7 and 31 of Commission Regulation (EEC) No 1418/88, hereinafter referred to as the 'Commission Regulation').

These conclusions were contested by exporters and importers. Firstly, the argument was maintained that no single market for SIDM printers existed and that their clear dividing lines could be drawn between the different market segments, as defined in terms of end-uses by a study of Ernst & Whinney Conseil, i.e. a low-, or mid-letter quality and a high-end segment. Therefore, it was argued that at least four or five different like products should be determined and, consequently, four or five different dumping and injury determinations should be established. Secondly, some exporters and one importer argued that specific printer models should be excluded from the like product definition because of their unique specifications, their exclusive design, their specific software and/or their specific application and use.

(a) Arguments concerning the like product definition

- (6) The Commission took all these arguments into consideration. It found that it was not contested that all SIDM printers on the Community market (about 800 models) were based on the same impact technology and their basic physical and technical characteristics were identical. On the other hand, it is obvious that the numerous printer models on the market differ in physical technical specifications, interfaces, softwares, weight, size, quality, features and accessories.
- (7) The printer market is, moreover, characterized by the fact that the dot-matrix printer technology, and the different physical and technical characteristics of the SIDM printers, their size, weight, specifications and features are subject to rapid developments and changes. In this respect, the German market research company IMV Info-Marketing Verlagsgesellschaft für Bürosysteme, Düsseldorf (hereinafter referred to as IMV

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No L 130, 26. 5. 1988, p. 12.

⁽³⁾ OJ No L 264, 24. 9. 1988, p. 56.

Info-Marketing), confirmed a present market trend to decentralize printing facilities i.e. to substitute heavy-duty printers by several lessdurable, lighter, smaller and less expensive printers. The relation between price and performance of these substitute printers is, according to IMV Info-Marketing, constantly improving.

- (8) As far as the application and use of the printers is concerned, no new arguments were advanced by the exporters against the like product definition in the Commission Regulation. In particular, no new aspects were supplied on the basis of which clear dividing lines among the products concerned, in terms of distinct characteristics and uses, could be found. In such circumstances, the Commission considered that, when faced with a spectrum or continuum of products where there are no clear distinctions among these products, it would be arbitrary, open to circumvention and probably unworkable to separate the products into a number of separate articles or series of like products.
- (9) In the light of the evidence presented, the Council confirms the Commission's provisional findings (recitals 11 to 17 of the Commission Regulation) that the SIDM printer market in the Community is best considered as a series of products with no clearly defined boundaries between them. SIDM printers which, regardless of their differences, have the same basic physical and technical characteristics and the same basic application and use, have therefore to be considered as being like products.

(b) Arguments concerning specific printer models

- (10) As far as the requests to exclude specific printer models are concerned, Seikosha argued that its printer SBP10, because of its print speed and its other qualities, could not be considered a like product to the other SIDM printers on the Community market. The Commission did, however, not consider that high print speed and quality differences distinguish the SBP10 printer as a separate product from other fast printing SIDM printers. Indeed, only such technical or quality differences which have the effect that the use, the application or the consumers' perception distinguish fundamentally a given printer from the other SIDM printers are likely to render a SIDM printer 'unlike'. Although it is true that, at present, the high speed of the SBP10, measured in characters per second (cps) is not equalled by any Community produced SIDM printer, the cps figure does not give an accurate figure of a printer's speed on typical texts. If the throughput of the SBP10 is compared to those of the Europrint models, the difference is not such as to distinguish this printer

fundamentally from the Community printer models.

- (11) An exporter (Hitachi Ltd) and an importer (Apple Computer International) submitted that they export and import respectively, into the Community, SIDM printers for use within either the exporter's mainframe or the importer's computer system. These printers form an integral part of these computer systems, have unique specifications designed for the respective computer system's requirements and cannot be used other than as a part of these systems. The importer (Apple), which is not a SIDM manufacturer could, however, also purchase its system printers from Community printer manufacturers while the exporter (Hitachi) is itself a SIDM printer manufacturer and exports and sells its printers only as part of its mainframe computer system.
- (12) In the light of these arguments, the Commission found that it is not unusual that SIDM printers are specifically designed and manufactured for a particular computer system. Since SIDM printers cannot be used as a stand-alone product but have to be connected to a computer, they always form part of a system. The basic physical and technical characteristics and the application and use of these specifically designed and manufactured printers remain similar to other SIDM printers not exclusively designed and manufactured for a given computer system. Furthermore, the products under consideration are serial-impact dot-matrix needle printers and not computer systems. Therefore, SIDM printers which form an integral part of, and are exclusively dedicated to, a computer system supplied by the manufacturer and/or the exporter of the printer in question, and which are only imported and sold within such a computer system, cannot be considered as being similar to the Community-manufactured SIDM printers. The mere fact, however, that printers are exclusively designed and manufactured for a computer system of an importer, without forming an integral part of and being imported together with such a computer system, cannot be considered sufficient to render these printers unlike to Community-manufactured SIDM printers.
- (13) Epson argued that its compact mini printer models 15011, 160, 180 and 183 are designed for use with the Epson PX16 and HX20 portable computers and the EHT hand held computers, are not like products to the Community manufacturers' printer models.

As regards this argument, the Commission found, on the one hand, that these printers do not have the basic physical and technical characteristics of SIDM needle printers. These compact

mini-printers are line impact dot-matrix printers and print line to line rather than character by character. Furthermore, they use only paper with a width smaller than that used by other SIDM printers. Thirdly, these printers are hand held, light weight portable printers for the specific needs of portable data printouts.

- (14) In contrast, the Community-produced SIDM printers which are the subject of these proceedings are at least desk-top printers and not perceived as portable printers for use in a portable pocket computer system. For these reasons, the Commission considers these printers as being different from the Community-produced SIDM needle printers. The Council confirms this finding and concludes that these printers fall outside the scope of the products under consideration.
- (15) As far as requests for exceptions for other printer models are concerned, these have been dealt with in recitals 24 to 29 of the Commission Regulation. Since no new arguments were submitted in this respect, the Council confirms the Commission's provisional conclusions.
- (16) In the light of the findings presented in the Commission Regulation (recitals 11 to 31), and of the considerations set out above, the Council concludes that SIDM printers are sufficiently all to be considered as one like product in the context of this proceeding. Consequently, all Community produced SIDM printers are like products to those exported from Japan, with the exception of special-purpose printers, printers forming an integral part of a computer system and imported and sold together with this system, and hand held pocket printers.

D. Normal value

- (17) Normal value for those products subject to the provisional duty was, for the purpose of definitive findings, generally established on the basis of the methods used for the provisional determination of dumping, taking into account new evidence submitted by the parties concerned.
- (18) One exporter claimed that the normal value established for certain of its sales on the domestic market should take account of the value of certain goods which, it alleged, were given as a form of rebate on the price paid for for the product under consideration. It was, however, established that these rebates were given only on accessories and were, accordingly, not directly linked to the sales under consideration.
- (19) Certain exporters continued to request that account be taken, for the purposes of establishing normal value by means of domestic prices, of transfer

prices between related companies or sales branches of these exporters on the Japanese market. The Commission, however, continued to consider such an approach as inappropriate for the reasons indicated in recitals 33, 39 and 40 of the Commission Regulation and this is confirmed by the Council.

- (20) Some exporters objected to the elimination of certain sales, or sales channels, from the calculation of normal value where it was based on domestic prices on the grounds that these sales were in fact made in the ordinary course of trade. However, the Commission was satisfied that, where such elimination occurred, the sales had been made in substantial quantities during the reference period and at prices which did not permit recovery in the normal course of trade of all costs reasonably allocated and within the reference period as provided for in Article 2 (4) of Regulation (EEC) No 2423/88. This conclusion is confirmed by the Council.

For the purposes of definitive findings, the Council confirms that normal values, in such circumstances and in cases where the remaining sales, i.e. those considered to be in the normal course of trade comprised less than 5 % of the volume of exports of the particular model concerned to the Community, were established by means of constructed values.

- (21) As regards the method of constructing normal values and in particular the amounts of selling, administrative and other general expenses and profit, one exporter claimed that since it had no sales of the product under consideration on the domestic market the selling, administrative and other general expenses and profit of its relatively few sales of other, unrelated, products should form the basis of the appropriate figure to be allocated for these expenses and profit to the constructed value of the products under consideration.

The Commission, however, saw no reason to change its view, as stated in recital 36 of the Commission Regulation, and this is confirmed by the Council, that the fact that a particular exporter does not sell the product concerned, and accordingly, does not have a sales organization on its domestic market, should not alter the basis for estimating selling, administrative and other general expenses and profit in the construction of that exporter's normal value. Furthermore, Article 2 (3) (b) (ii) of Regulation (EEC) No 2433/88 now confirms that, in such circumstances, such expenses and profit shall be calculated by reference to the expenses incurred and the profit realized by other producers or exporters in the country of origin or export on profitable sales of the like product.

- (22) Certain exporters objected to an allocation, in constructing their normal values, on the basis of the sales, administrative and other general expenses and profit realized by other producers or exporters on their profitable sales of the like product in Japan. In these cases, the exporters concerned had not sold, in the normal course of trade, 5 % or more of the volume of exports of the particular model concerned to the Community and, in these circumstances, in accordance with the Commission's normal practice, normal value was constructed as provided for by Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88. One of the exporting companies, which had not disputed the Commission's preliminary findings on the 5 % rule, later argued that it had sold the like product in sufficient quantities in the domestic market for the selling, administrative and other general expenses and profit for these sales to be taken into consideration in the calculation of constructed normal values. Insufficient evidence of this assertion was, however, submitted and, accordingly the Council confirms the Commission's preliminary findings.

The Council therefore confirms the Commission's position, that, in these circumstances, in accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, the amount of selling, general and administrative costs and profit should be calculated with reference to the expenses incurred and the profit realised by other exporters on their profitable sales of the like product on the Japanese market.

- (23) Another exporter argued that an allocation should not be made to include certain selling, administrative and other general expenses of subsidiary or related distributor companies. However, the Commission considers and the Council confirms that in order to include all costs incurred in the constructed normal value, in accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, appropriate account must be taken of such costs.
- (24) As regards profit, certain exporters argued that the figure included in their normal values was excessive. However, where an individual figure could be calculated for an exporter then that figure, i.e. the actual profit realized on profitable sales, was used in constructing normal value.
- (25) Some exporters also argued that by restricting the calculation to sales of machines in the normal course of trade and thereby eliminating certain

sales at a loss an artificially high profit margin was obtained. In addition, it was argued that certain sales at a loss should be considered in the normal course of trade being normal commercial practice in the dot-matrix printer business. The Commission rejected this view since the provisions of Article 2 (4) of Regulation (EEC) No 2423/88 provide that in such circumstances normal value shall be determined on the basis of the remaining, i.e. profitable, sales only.

- (26) For those exporters for which the information available was insufficient to make this calculation or who traded at a loss or who did not make sales, or sufficient sales, of comparable products on the domestic market, in view of the variety of profit margins found, a weighted average profit margin for like products of the other exporters for which appropriate information was available was applied.

This weighted average profit margin was calculated to be 37 %.

The method adopted by the Commission concerning the inclusion of profit in constructed normal values is entirely in line with that laid down in Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, and accordingly the Council confirms the Commission's findings.

- (27) As regards sales of the product concerned to independent customers which resold the product under their own brand names (OEMs), one exporter continued to claim that normal values should be based on a weighted average of all sales in the ordinary course of trade on the Japanese market, i.e. a weighted average of both own-brand sales and OEM sales. On this point, the Council confirms the Commission's position as stated in recital 38 of the Commission Regulation. In addition, the Council considers that, while all serial-impact dot-matrix printers should be considered like products within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 (see recitals 5 to 9 of this Regulation) to establish a single normal value for all models of the product concerned would not allow a fair comparison with export prices as it required by Articles 2 (9) and 2 (10) of Regulation (EEC) No 2423/88. In order for such a fair comparison to be carried out, normal values were established for each model and comparison made with the export price of the same or most closely resembling model. Such an approach is in line with that adopted for the calculation of the injury threshold, where for purposes of arriving at levels of price undercutting, only identical or similar models were compared.

- (28) The Council also confirms the Commission's position as regards certain selling, administrative and other general expenses incurred by sales companies or departments in Japan as stated in recitals 39 and 40 of the Commission Regulation.

E. Export price

- (29) With regard to exports by Japanese producers directly to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the product sold.
- (30) In other cases, exports were made to subsidiary companies which imported the product into the Community. In such cases it was considered appropriate, in view of the relationship between exporter and importer, that export prices be constructed on the basis of prices at which the imported product was first resold to an independent buyer. Discounts, rebates and the values of free goods directly linked to a sale under consideration were deducted from the price to the independent customer and suitable adjustment was made to take account of all costs incurred between importation and resale, including all duties and taxes.
- (31) In addition, a number of sales to independent customers in the Community were made by exporters' subsidiary companies either in or outside the Community. In some such cases, it appeared that although the related company was not the formal importer it assumed certain functions of, and bore certain costs normally incurred by, an importer. It took orders, purchased the product from the exporter and resold, to, *inter alia*, unrelated customers. These customers were generally distributors of the product concerned in areas, in which the exporter did not have a subsidiary company importing and distributing the products. Sales by some exporters were also made to an independent customer in the Community via more than one of the exporter's subsidiaries. In all such cases except one, both subsidiaries were situated within the Community and for the exception, one subsidiary was located inside and one outside the Community. In these cases, the costs normally incurred by an importer were incurred by both the subsidiaries of the exporters concerned. In all instances, there was a price paid by one subsidiary to the exporters and a higher price paid by the second to the first subsidiary. It was claimed that, in all such circumstances, the export price actually paid or payable in terms of Article 2 (8) (a) of Regulation (EEC) No 2423/88 should be that invoiced by whichever

subsidiary sells to independent customers in the Community.

The Commission considers that, in these circumstances, the products were sold for export to the Community by the exporter in Japan to a subsidiary located either inside or outside the Community. These subsidiaries, whether formally importing the product or not, assume functions typical of an importing subsidiary. Given the relationship between the exporter and its subsidiary, the export price, in such cases, considered to be a transfer price, is therefore rejected as unreliable. Accordingly, the export price had to be constructed on the basis of the price at which the product was first sold to an independent buyer, allowance being made for all costs incurred by the subsidiary or subsidiaries in question, as provided for by Article 2 (8) (b) of Regulation (EEC) No 2423/88.

- (32) The Council confirms the Commission's findings on establishing export prices as set out in recitals 45 to 49 of the Commission Regulation.

F. Comparison

- (33) For the purpose of a fair comparison between normal value and export prices, the Commission took account, where appropriate, of differences affecting price comparability, such as differences in physical characteristics, and differences in selling costs, where claims of a direct relationship of these differences to the sales under consideration could be satisfactorily demonstrated. This was the case in respect of differences in credit terms, warranties, commissions, salaries paid to salesmen, packing, transport, insurance, handling and ancillary costs.
- (34) Normal value and export prices, the latter based on both prices paid and constructed export prices, were compared at the same level of trade. The prices or constructed values to which adjustments were made were established at the level of exporting companies' domestic sales companies or sales organizations. Export prices were established ex export sales company or sales organization.
- (35) One exporter continued to claim an allowance for differences in quantities sold domestically from those sold for export to the Community. The claim was based on an alleged cost difference resulting from differences in volume of production. However, no additional evidence to that available for the provisional findings was supplied regarding savings in the cost of producing different quantities. The Council therefore confirms the Commission's finding that the claim should be rejected.

- (36) The Council also confirms the Commission's findings on comparison of normal value and export price as set out in recitals 52 and 54 to 56 of the Commission Regulation.

G. Dumping margin

- (37) Normal value for each of the models of each exporter was compared with export prices of comparable models on a transaction-by-transaction basis. The examination of the facts shows the existence of dumping in respect of imports of dot-matrix printers originating in Japan from all the Japanese exporters investigated, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export of the Community.

- (38) The margins of dumping varied according to the exporter, and expressed as a percentage of cif Community frontier values the weighted average margins were as follows:

Alps Electrical Co Ltd	6,1 %
Brother Industries Ltd	39,6 %
Citizen Watch Co Ltd	43,3 %
Copal Co Ltd	18,6 %
Fujitsu Ltd	86,0 %
Japan Business Computer Co Ltd	22,4 %
Juki Corporation (previously Tokyo Juki)	80,0 %
Nakajima Ltd	12,0 %
NEC Corporation	67,5 %
OKI Electric Industry Co Ltd	8,1 %
Seiko Epson Corporation	29,7 %
Seikosha Co Ltd	73,0 %
Shinwa Digital Industry Co Ltd	9,5 %
Star Micronics Co Ltd	13,6 %
Tokyo Electric Co Ltd	4,8 %

- (39) For those exporters which neither replied to the Commission's questionnaire, nor otherwise made themselves known, dumping was determined on the basis of the facts available in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88.

In this connection the Commission considered that the results of its investigation provided the most appropriate basis for determination of the margin of dumping and that it would create an opportunity for circumvention of the duty to hold that the

dumping margin for these exporters was any lower than the highest dumping margin of 86 % determined with regard to an exporter who had cooperated in the investigation. For these reasons it is considered appropriate to use this latter dumping margin for this group of exporters.

As regards the company which refused to cooperate with the Commission during the preliminary investigation, the circumstances remained unchanged up to the final examination of the facts and accordingly the Council confirmed that it would be appropriate that definitive findings for this company should also be made on the basis of the facts available, i.e. the results of the investigation.

- (40) It was considered that, in this case, it would also create an opportunity for circumvention of the duty and would constitute a bonus for non-cooperation to hold that the dumping margin for this exporter was any lower than the highest dumping margin determined with regard to an exporter who had cooperated in the investigation. For these reasons it is considered appropriate to use the highest dumping margin for this company.

H. Community industry

- (41) The Commission interpreted the term 'Community industry' as referring to the four Community producers that are members of Europrint (see recital 69 of Commission Regulation). This conclusion was based on the consideration that the four Europrint members manufactured about 65 % of the total Community output of SIDM printers, i.e. a major proportion of the total Community production of the like product, and that the reasons which led three Europrint members to import SIDM printers from Japan, as well as the volume, value and other circumstances of these imports could be taken as legitimate measures of self defence (see recitals 63 to 67 of the Commission Regulation).

- (42) With regard to this conclusion, some exporters argued, firstly, that there was no need for the three producers to import Japanese SIDM printers and to offer a full range of printers, secondly, that these imports inflicted injury on the importing producers because these SIDM printers are like products to the producer's own manufactured SIDM printers, and, thirdly, that the amount and the growth of those imports show that such imports surpassed the limits of what could reasonably be defined as a measure of mere self-defence.

(43) As to the first argument, it should be recalled, in the first place, that all three Community producers manufactured similar types of printers before they decided. In the years 1984 to 1986, to substitute these own produced printers by low-price printers of Japanese origin. The three producers, therefore, did not increase their range of printers merely, but replaced own-produced printers by Japanese models. Secondly, it is obvious that potential clients are more inclined to buy office automation equipment from a supplier who offers a full range of printers. The three Community producers can therefore not be criticized for their decision to continue to offer a full range of SIDW printer models.

Thirdly, it is not contested that the main reason for these imports is the fact that, because of the low price level of the printer market caused by imports from Japan, the costs of development and production of such substitute new printer models incurred by the free companies would not have been recovered within a reasonable time.

(44) The exporters second argument confuses two different issues, namely the determination of the like product and the question whether the imported models are in direct competition to the importers' own manufactured printers. For the purposes of defining the like product, the fact that no clear dividing lines between the different products can be drawn is, in the opinion of the Council, sufficient to determine that, in general, all SIDW needle printers form one like product. This lack of clear dividing lines does, however, not mean that the Community producers inflicted injury on themselves by importing these printers. Since the majority of Japanese exporters sell printer models in the different market segments and offer a full range of printer models, there cannot be any question of self-inflicted injury when their Community competitors try, by these imports, also to offer such a range of printer models.

(45) As far as the third argument is concerned, the Commission reviewed the import figures of three producers during the investigation period. It found that these imports represented respectively 10,68 %, 28,9 % and 47,4 % of the total production of these producers. In this respect, the Commission considered that these imported printers all belonged to the low end of the market (as defined by the study of Ernst and Whinney Conseil). This market segment is the most important of the printer market and has recently grown significantly faster than the total market. In addition, the Community producers wished to regain

their market shares lost by abandoning their own production in this sector. The volume, value and growth of these imports can, therefore, not be considered as being disproportionate to their own production levels.

(46) In the light of the foregoing, and for the reasons and circumstances which led the Community producers to import Japanese SIDW printers (see recitals 63 to 67 of the Commission Regulation), the Council concludes that the imports of SIDM printers from Japan by the Europrint members have to be considered as reasonable measures of self-defence. Consequently, the three Europrint members should not be excluded from the Community producers representing the Community industry.

I. Injury

(a) *Volume and market shares of dumped imports*

(47) In its provisional findings, the Commission established that the market share held by Japanese exporters in the Community had increased from 49 % in 1983 to 73 % in 1986. While the total SIDM printer market grew from 800 000 units in 1983 to 2 093 000 units in 1986, i.e., a growth of 162 %, the Japanese market share shows growth from 390 000 units in 1983 to 1 522 000 units in 1986, a growth of 290 %. The Commission also found a considerable increase of the Japanese market presence in the different market segments defined in terms of print speed by some market research companies (IDC and Data quest) and referred to in the study of Ernst and Whinney Conseil, between 1983 and 1986. In the low end segment, the Japanese exporters share increased from 65 % to 88 %, and the Community Industry's decreased from 24 % to 7 %. In the medium market segment, the Japanese exporters' share increased from 46 % to 65 %, and the Community Industry's decreased from 34 % to 25 %. In the high market segment, the Japanese exporters share increased from 4 % to 47 % and the Community industry's decreased from 6 % to 28 %. Ernst and Whinney Conseil commented on this development that the EEC manufacturers were, in the low end segment, the least successful and resorted to Japanese OEM sales to cover this range of products under their brand names.

(48) With respect to the figures concerning the low end segment, the exporters argued that the market share of the Community industry should be adjusted because of the OEM-imports of the three

Europrint members. The imported printers of these producers are sold under their own brand name. According to the exporters, the market share of the Community industry was therefore significantly under-estimated. The Council considers, however, that for these so called OEM imports, the Community producers act more as distributors of Japanese SIDM printers than as manufacturers. No adjustment is therefore justified.

(b) *Prices*

(aa) *Price depression*

- (49) Based on the Ernst and Whinney Conseil study, the Commission found the unit price trend of the total SIDM printer market in the Community during 1983 to 1986 showed an overall decrease of between 25 % and 35 %. The price decrease was considerably higher in the low and high end segment than in the medium segment. These different price decrease factors are consistent with the considerable increase in relative terms of the Japanese exporter's market share in the low and high end segments. The Community industry had also to follow this price depression trend.

(bb) *Price undercutting*

- (50) As far as price undercutting is concerned, the Commission established a detailed price undercutting study concerning the Japanese exporters' prices and those of the Community manufacturers. In both cases to the first unrelated buyer.

Firstly, representative SIDM printer models of the four Europrint members were selected. The SIDM printer models treated as representative accounted for about 68 % of the total sales of all models of the Community industry within the Community. As a second step, on the basis of a model comparison study supplied by IMV Info-Marketing and in close collaboration with it, the SIDM printer models of the Japanese exporters most similar to the Europrint member models, as far as technical specifications, features, speed, application and use was concerned, were determined. These selected Japanese printer models accounted for about 65 % of all Japanese exporters' sales during the period of investigation in the Community. Thirdly, the net weighted average prices of these comparable printer models in France, Germany, Italy and the United Kingdom were compared, in the OEM, distributor, dealer and the end-user sales channels.

- (51) Where no corresponding price in the different sales channels were found, adjustments were made

(25 % between dealer and distributor's sales channels). When the Commission was satisfied that important technical or physical differences had a considerable impact on the consumer's perception of the printers and on prices, adequate adjustments were made of the printer models were excluded from the comparison. Additional adjustments were made for differences in the weight of the compared printer models (for difference between 50 % and 74 % : 10 % price adjustments, for differences between 75 % and 99 % : 20 % price adjustment).

- (52) Some exporters argued that the adjustments for weight differences were too low and that additional adjustments should be made for differences in durability of the printers (i.e., for 'mean time between failure' and the print head life). Another exporter argued that differences in the costs of production between his SIDM printers and the Community printers should be taken into account.

The Commission could, however, not accept these arguments. As far as the weight differences are concerned, the market research institutes, IMV Info-Marketing and Ernst and Whinney Conseil, stated that weight differences should, but only to a certain degree, be taken into account for price comparison purposes. While IMV Info-Marketing stated that a precise weight adjustment was impossible, Ernst and Whinney Conseil submitted a formula for calculating such adjustments. However, this organization also admitted that the formula was based on assumptions and estimations and not on precise, reliable and verifiable data. The heavier weight of a printer might also be the consequence of out-dated production techniques and does, therefore, not necessarily result in higher quality or better consumer appreciation. Under these circumstances, only limited weight adjustments were considered appropriate. As far as adjustments for durability are concerned, the Commission found, based on the advice of IMV Info-Marketing, that these differences, when they exist at all, are not quantifiable. Moreover, no commonly accepted standards exist for measuring these differences. No adjustments were therefore granted. The Council confirms these findings of the Commission.

- (53) The price comparison showed that all but three Japanese exporters had, on average, undercut the prices of comparable models of the Community manufacturers. The weighted average price undercutting ranged from 3,93 % to 43,42 %. Of the three non-undercutting exporters, two had either exported very low quantities or sold through specific customers, or both. All three sold at prices, which, if applied to the comparable printer models

of the Community industry, would not have permitted a reasonable return on sales.

In these circumstances, the Council concludes that the prices of the dumped imports undercut significantly the prices of comparable Community produced SIDM printers.

(c) *Other relevant economic factors*

- (54) In its provisional findings (see recitals 83 to 87 of the Commission Regulation) the Commission found that capacity, production and the sales of SIDM printers of the Community industry increased between 1983 and 1986. Capacity utilization remained, however, stable at about 70 %. During the same period, the Community producer's stocks of unsold SIDM printers increased more rapidly than their sales. Moreover, while in 1984 the complainant Community industry as a whole had an weighted average return on sales on their own SIDM printer production of about 9 %, the weighted average return on such sales for the period under investigation was around 1 %. In this context, it should be noted that from 1984 to 1987 (first three months) the average production costs for SIDM printers of the Community industry decreased. Nevertheless, the Community industry suffered a growing decline in profitability. Moreover, the Community producers invested more to reduce their costs of production than in new capacity. Finally, they have been forced to scale down their research and development expenditure on printers which is substantially below that of their main Japanese rivals.

(d) *Conclusions*

- (55) In recitals 88 to 92 of the Commission Regulation, the reasons are specified which led the Commission to conclude that the Community SIDM printer industry experienced material injury. Indeed, the figures concerning the SIDM printer market in general show a steady increase of demand, and consequently, a continuously growing market. In contrast, the figures concerning the Community manufacturers show that their performance did not follow the market trends with their presence in the market declining considerably. Moreover, the dramatic drop in their profitability leads the Council to consider that the Community industry remained at a low and still declining level of financial performance and suffered material injury.

J. Causation of injury by the dumped imports

- (56) The Commission concluded in recital 108 of its Regulation that the volume of the dumped imports, their market penetration, and the prices at which the dumped SIDM printers had been offered, taken in isolation, caused material injury to the Community industry.
- (57) With regard to this conclusion, the exporters and importers raised, effectively, two arguments, firstly, that the Commission failed to show the specific injurious effect of the dumped imports of each of the CJPRINT members and, secondly, that the difficult market situation of the Community industry was either self-inflicted or caused by other factors such as low-priced non-dumped imports from third countries other than Japan. In this respect, the exporters argued further that the Community producers had a long history of conservative market behaviour which was inappropriate in the fast developing printer market, that they applied the wrong market strategies (i.e., a niche market strategy), that they were unwilling to devote sufficient resources to necessary research and development investments, and, in the end, that they were only suffering from their own high cost structures.
- (58) The Council cannot accept these arguments. As to the first argument, it should be noted that Article 4 (1) of Regulation (EEC) No 2423/88 requires a determination that the injury was caused by dumped imports. This provision which refers to all dumped imports cannot be interpreted in such a narrow way that the injurious effects of the sales of each exporter, taken in isolation, have to be determined. Such an individual injury determination would, in the vast majority of cases, be impossible and, thus, render Regulation (EEC) No 2423/88 unworkable. Furthermore, dumped exports which, looked at in isolation, did not cause material injury, would fall outside any anti-dumping proceeding, while their cumulative effect might well have considerable injurious effects. In accordance with the objectives of Regulation (EEC) No 2423/88, the overall effect of the imports on Community industry should be examined and adequate measures taken in respect of all exporters, even if the volume of their exports, taken on an individual basis, is of little importance (see judgment of the Court of 5 October 1988, Case No 294/86, *Technintorg v. Commission*, of the European Communities not yet published). The Council considers, therefore, that the injurious effects of the dumped imports of all exporters concerned have to be assessed on a cumulative basis and not separately for each exporter.

- (59) As to the second argument, further investigation by the Commission has shown that the marketing strategies and the OEM imports of the Community industry were substantially influenced by the low-price imports of Japanese printers since 1983. Indeed, on the one hand, the price level for SIDM printers on the Community market decreased constantly since the increase of the imports of SIDM printers from Japan and, on the other hand, the costs of the Community producers, despite considerable efforts, did not proportionally follow this price decrease. The Community industry can therefore not be criticized, either for looking to market segments in which there was low-price elasticity, at least for a certain time period, and where low-priced Japanese imports did not yet have a high market penetration or for importing low priced SIDM printers from Japan. The investigation showed, further, that the marketing strategies of the Community industry were mainly influenced by the lack of financial resources due to reduced profitability which was itself the result of the low priced dumped imports. Finally, as far as the quality argument is concerned, the Japanese exporters insisted, for the purposes of the determination of price undercutting, that the Community produced printers are, in general, of equal, if not of superior quality, to comparable printers of Japanese origin.
- (60) It was also argued by certain exporters, that imports of low-priced SIDM printers from third countries other than Japan had a significant negative effect on the market and on the price level. According to the information supplied by these exporters, the effects of these imports were, however, restricted to one member state and became substantial only after the end of the period under investigation. They can, therefore not have had the injurious impact on the Community market claimed by the exporters. Moreover, the Council is of the opinion, in keeping with the case law of the court (see Judgment of 5 October 1988, Canon v. Council, joint Cases No 277/85 and No 300/85, not yet published) that findings of injury are not confined to cases where dumping is the principal cause and accordingly that responsibility for injury is attributable to the exporters, even if the losses resultant from dumping are just a part of a greater injury arising from other factors. Finally, the fact that a Community producer is facing difficulties attributable to causes other than dumping is not a reason to deprive that producer of all protection against the injury caused by dumping.
- (61) In conclusion, the Council confirms the Commission's findings that the volume of the dumped imports, their market penetration, the prices at

which the dumped printers have been offered in the Community, and the losses and loss of profit suffered by the Community industry caused material injury to the Community industry.

K. Community interest

- (62) In its provisional findings, the Commission considered the position of the Community printer industry, the processing industry, printer dealers and end-users. For the reasons given in recitals 109 to 120 of the Commission Regulation, it concluded that it was in the overriding interest of the Community that injury due to dumping be eliminated.
- (63) The exporters contested these conclusions, with in essence, three arguments. Firstly, they argued that the four Europrint members each form part of bigger industrial conglomerates which have sufficient resources to make the necessary investments for future generations of printer technology, to increase their marketing efforts and to reduce their costs of production. Secondly, the processing industry, the distributors and dealers, but above all the end-users would suffer from duty inflated printer prices. Thirdly, any duty imposed on Japanese origin SIDM printers would only serve to protect the higher cost structure of Community producers. One exporter in particular stressed that it had made a substantial return of sales of its SIDM printers in the Community. Since independent studies had shown that the costs of manufacture of the Europrint models are higher than the comparable models of this exporter (even on the assumption of similar production quantities and conditions), anti-dumping duties would become an instrument to protect the decision of the Community producers to make more cost expensive models than the said exporter. Anti-dumping measures would, therefore, have a clear protection effect which cannot be in the interest of the Community.
- (64) As to the first argument, it should be noted that, as the Commission already indicated in its Regulation, the fact that all Europrint members form part of a bigger company will not put them into a position to take up the technological challenge of improving the present SIDM technology or, even less, of developing new non-impact technologies. Experience has shown that even overall profitable companies are not inclined to invest for long in low-performance or loss-making departments of their business.

Such investments are the more unlikely as they will involve considerable financial amounts with the risk of no or small return. Similar considerations are valid for increases of marketing efforts or investments to reduce costs of production. The Council therefore confirms the Commission's findings that, without protection from unfair trade practices, the Community industry would fall further behind in the SIDM printer market, and consequently in the development of new printer technology. Since printers and computers are closely connected, the abandoning of, or substantial cuts in, the production of printers would also seriously effect the electronic data-processing industry in the Community.

- (65) As far as the processing industry, the distributors, dealers and the end-users are concerned, it should be borne in mind that the possible net increase of costs for the users of SIDM printers, due to the amount of duty, would represent only a relatively small proportion of the total operating costs of the users of SIDM printers. In addition, the previous price advantages originated from unfair business practices and there cannot be any guarantee of, or justification for, allowing these unfair low prices to persist. Moreover, these interests have to be weighed against the multiple consequences in the Community, including those of unemployment, of not offering protection to the Community industry and thus putting at risk the continued existence of a viable European manufacturing industry of SIDM printers. Indeed, the short-term advantages of low prices are by far outweighed by the long-term disadvantages of losing a Community-based printer manufacturing industry. For these reasons, the Council considers that it is in the Community interest to protect a SIDM printer manufacturing capacity in the Community.

- (66) As to the cost argument, it should be noted that the Community manufacturers had already reduced their manufacturing costs during recent years. It has, however, also to be noted that the steady decline in profitability as a consequence of reduced sales in the face of huge quantities of dumped imports prevented the Community manufacturers from improving their cost structure to the necessary degree and to build more cost-efficient SIDM printers. Also after the imposition of duties the

Community industry will continue to be exposed to price and quality competition. The Council is of the opinion that Community interests are effectively protected by the measures against dumped imports, even if an anti-dumping duty does not result in insulating the complainant industry from competition from other Community producers or from other third countries who are not engaged in dumping (see Judgment of the Court of 5 October 1988, Case No 250/85, Brother v. Council of the European Communities, not yet published). The re-establishment of such a fair competitive situation will allow the Community industry to benefit, as Japanese exporters did in the past, from increased economies of scale, thus allowing intensified research and development efforts, the establishment of new production methods and, finally, the further reduction of manufacturing costs. It can also be expected that the processing industry, the printer trade, end-users and consumers will benefit from such an improvement in the Community industry's economic conditions. Therefore, the Council is of the opinion that anti-dumping duties which do not exceed the amount which is necessary to remove the injury, will not have the protectionist effect claimed by the exporters.

- (67) As to other arguments raised by the exporters or importers, they have been already dealt with in detail in the Commission's provisional findings.

No new arguments have been submitted in this respect. Therefore, for the abovementioned reasons and for those expressed in recitals 103 to 120 of the Commission Regulation, the Council concludes that it is in the overriding interest of the Community that the injury due to dumping be eliminated and that the Community industry be accorded protection against dumped imports of SIDM printers from Japan.

L. Duty

- (68) In order to eliminate the injury suffered by the Community producers, they should be permitted to increase substantially the selling prices of their own produced SIDM printers without losing, perhaps even regaining, their market share in the Community. Consequently, the duty should be such as to eliminate the price undercutting of each Japanese SIDM printer exporter and to allow the Commu-

nity producers to increase their prices in order to achieve an adequate return on sales. Indeed, in a market situation where prices are already depressed by dumped imports (see recitals 49 to 53), it is not sufficient to eliminate only the price undercutting but the duty has also to guarantee a reasonable return on sales for the Community industry.

(a) *The method of calculation*

(69) For the purposes of the duty calculation and as far as the elimination of price undercutting is concerned, the Commission established the weighted average price undercutting margin for each exporter (see recital 53). The average price level of each Japanese exporter calculated on the basis of the models compared was then compared with the average Community industry's price level, indexed at 100.

(70) As far as the return on sales of SIDM printers in the Community is concerned, the Commission took the view that the profit rate of about 9 % of the Community industry in the year 1984 was not appropriate for this calculation since the profitability in this year was influenced by the adoption by the Community producers of the IBM emulation. In this respect a return on sales before tax for SIDM printers of 12 % was considered to be an appropriate minimum for the Community industry. This return should cover additional costs of research and development, additional costs to improve the marketing and advertising efforts and the additional costs of the appropriate financing in the Community. These additional efforts should enable the Community producers to regain lost market presence and to make up the leeway in SIDM and non-impact print technology. In this context, account was taken of the average return of the Community producers on their sales of SIDM printers (own production) in the Community during the period under investigation (1 %).

In view of the foregoing, a net profit factor was calculated representing the difference between the average actual prices of the Community industry and a target price which would enable the Community industry to achieve a 12 % return on sales. This net profit factor is 12,5, and the target price of the Community industry had consequently be fixed at 112,5 (the average Community industry's price level being 100).

(71) In order to calculate for each Japanese exporter an individual injury factor (injury threshold), the individual price undercutting margin was added to the net profit factor. This injury threshold is the price increase necessary for the elimination of injury by each exporter. For those exporters where no price undercutting was found, the difference between the average selling price for the Japanese models and the target price for the calculation, the same methods as explained in recitals 50 and 51 was applied. It was found that all three exporters sold their models for less than the target prices of the comparable Community models, the difference between the weighted average selling price of the exporter and the target price for the Community producers being the injury threshold for each of these exporters.

(72) In order to establish the rate of duty to be imposed, the individual injury threshold referred to in recital 71 has to be expressed as a percentage of the cif value of the imports. To do this, for each exporter the weighted average selling price of its sales to the first unrelated buyer, used for the purpose of establishing price undercutting (see recital 50), has been compared with the average cif value of these sales. The individual injury threshold was then expressed as a percentage of the weighted average resale price of each exporter at cif level. The result of this calculation is the price increase at the Community frontier necessary to remove the injury caused by each exporter.

(b) *Arguments of the exporters*

(73) Some exporters argued that the calculation of the injury threshold and the duty should not be made on an individual and exporter-specific basis but should be established on a global and equal basis for all exporters on the basis that, since the existence of the injury is determined on a global and cumulative basis and price undercutting is only one potential cause of injury, and individual duty calculation based alone on price undercutting and target profit is not adequate.

As regards this argument, it has to be noted that injury can be determined on the basis of numerous factors. When assessing whether a duty below the dumping margin established would be adequate to remove the injury, difficult and complex economic appreciations are necessary which imply inevitably a certain use of discretion. In this context, the Council is of the opinion that in this case the effects of dumping resulted substantially in the

Japanese exporters selling at lower prices than the Community industry. The reference to price undercutting and the use of a target price, at which the Community industry would have sold had the dumping not occurred are therefore, in the opinion of the Council, proper means to establish the extent of the injury. Since the price undercutting margins were individually calculable and varied considerably, the Council is of the opinion that in the present case the amount of the price undercutting of one exporter should not be used for the duty calculation of another exporter.

- (74) Some exporters argued that when calculating the duty, the Commission should take account of the fact that a high difference between the lowest and the highest duty established might force the exporters with high dumping duties out of the Community market. This might reduce competition and benefit only the Japanese exporters with low dumping duties.

The Commission could not accept this argument. Firstly, it has to be noted that it is based only on conjecture. Secondly, the Commission considered that it is in the Community's interest to re-established a fair competitive situation. The Council confirms this view.

Consequently, anti-dumping duties should neither have a protectionist effect for the Community industry nor cause any undue handicap for the Japanese exporters. They are designed to re-establish and protect fair and workable competition rather than to protect individual competitors. If, therefore, some exporters' position on the market suffers after the imposition of anti-dumping duties, then this is only the consequence of their inability to face a fair and workable competitive market situation.

- (75) On the basis of these considerations, the Council confirms the Commission's position that it would not be in the Community's interest to mitigate the consequences of the unfair business practices of the exporters concerned and, in the end, to insulate them from the effects of a normal commercial market situation and workable competition.

In conclusion, and on the basis of the duty calculation method as described in recitals 69 to 71 as provided for in Article 13 (3) of Regulation (EEC) No 2423/88, the Council considers it appropriate that the amount of the duty to be imposed should be the following:

Alps Electrical Co. Ltd	6,1 %
Brother Industries Ltd	35,1 %
Citizen Watch Co. Ltd	37,4 %
Copal Co. Ltd	18,6 %
Fujitsu Ltd	47,0 %
Japan Business Computer Co. Ltd	6,4 %
Juki Corporation (previously Tokyo Juki)	27,9 %
Nakajima	12,0 %
Nec Corporation	32,9 %
Oki Electric Industry Co. Ltd	8,1 %
Seiko Epson Corporation	25,7 %
Seikosha Co. Ltd	36,9 %
Shinwa Digital Industry Co. Ltd	9,5 %
Star Micronics Co. Ltd	13,6 %
Tokyo Electric Co. Ltd	4,8 %

- (76) For those which neither replied to the Commission questionnaire, nor otherwise made themselves known or refused full access to information deemed to be necessary by the Commission for its verification of the company's records, the Council considers it appropriate to impose the highest duty calculated, i.e. 47%. Indeed, it would constitute a bonus for non-cooperation to hold that the duties for these exporters were any lower than the highest anti-dumping duty determined.

- (77) The definitive anti-dumping should apply to all models of SIDM printers from Japan with the following exceptions: firstly, SIDM printers used in bank machines, automated teller machines, electric cash registers, point-of-sales machines, calculators, ticket-issuing machines and receipt-issuing machines which have only one pitch and/or magnetic-stripe readers and/or automatic page-turner drives; secondly, SIDM printers which form an integral part of, and are exclusively dedicated to a computer system supplied by the manufacturer and/or exporter of the printers in question and which are imported or sold only within such a computer system; thirdly, hand-held portable SIDM printers which are designed for use within portable and/or hand-held computers, which are line-impact dot-matrix printers and are exclusively used for portable data printouts.

M. Collection of provisional duty

- (78) In view of the size of the dumping margins found and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts should be collected by way of provisional anti-dumping duties, either in full or to a maximum of the duty definitively imposed in those cases where the definitive duty is less than the provisional duty. Provisional anti-dumping duties collected or securities received for SIDM printers which are not covered by the definitive anti-dumping duties should be released,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of serial-impact dot-matrix needle printers falling within CN code ex 8471 92 90 and originating in Japan.

2. The rate of duty shall be 47,0 % of the net free-at-Community-frontier price before duty, with the exception of imports of the products specified in paragraph 1 which are sold for export to the Community by the following companies, the rate of duty applicable to which is set out below :

Alps Electrical Co. Ltd	6,1 %
Brother Industries Ltd	35,1 %
Citizen Watch Co. Ltd	37,4 %
Copal Co. Ltd	18,6 %
Japan Business Computer Co. Ltd	6,4 %
Juki Corporation	27,9 %
Nakajima All Precision Co. Ltd	12,0 %
Nec Corporation	32,9 %
Oki Electric Industry Co. Ltd	8,1 %
Seiko Epson Corporation	25,7 %
Seikosha Co. Ltd	36,9 %
Shinwa Digital Industry Co. Ltd	9,5 %
Star Micronics Co. Ltd	13,6 %
Tokyo Electric Co. Ltd	4,8 %

3. The duty specified in this Article shall not apply to those products described in paragraph 1 which have the following specifications :

- serial-impact dot-matrix needle printers used in bank machines, automated teller machines, electric cash registers, point-of-sales machines, calculators, ticket-issuing machines and receipt-issuing machines which have only one pitch and/or magnetic-stripe readers and/or automatic page-turner drives,
- serial-impact dot-matrix needle printers which form an integral part of, and are exclusively dedicated to a computer system supplied by the manufacturer and/or exporter of the printers in question, and which are imported and/or sold only within such a computer system,
- hand-held and portable SIDM needle printers which are designed for use within portable and/or hand-held computers, and which are line-impact dot-matrix printers and exclusively used for portable data print-outs.

Article 2

The amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 1418/88 shall be collected at the rates of duty definitively imposed where the definitive rate of duty is lower than the provisional anti-dumping duty and at the rates of provisional duty in all other cases. Secured amounts which are not covered by the rates of duty definitively imposed shall be released.

Article 3

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

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

Done at Brussels, 23 November 1988.

For the Council

The President

Th. PANGALOS