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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2093/91

of 15 July 1991

imposing a definitive anti-dumping duty on imports of small-screen colour television receivers originating in Hong Kong and the People's Republic of China and collecting definitively the provisional duty

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 from the Commission submitted after consultation within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EEC) No 129/91⁽²⁾, imposed a provisional anti-dumping duty on imports into the Community of small-screen colour television receivers (hereinafter referred to as SCTVs) originating in Hong Kong and the People's Republic of China and falling within CN code 8528 10 71. The Council, by Regulation (EEC) No 1283/91⁽³⁾ extended this duty for a period not exceeding two months.

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping duty, the interested parties who so

requested 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 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 to make representations subsequent to the disclosure.

(4) The oral and written comments submitted by the parties were considered and, where appropriate, the Commission's findings were modified to take account of them.

(5) Due to the complexity of the proceeding, in particular to the detailed verification of the voluminous data involved and the numerous arguments put forward, including the study of related issues which arose during the proceeding and which could not have been foreseen at its outset, the investigation could not be concluded within the normal time limit as was mentioned in recital 5 of Regulation (EEC) No 129/91.

C. PRODUCT UNDER CONSIDERATION, ORIGIN FOR CUSTOMS PURPOSES

(6) In its provisional findings the Commission, subsequent to a claim made by a Hong Kong producer/exporter and consistent with the conclusions in Council Regulation (EEC) No 1048/90⁽⁴⁾ imposing definitive anti-dumping duties on imports of SCTVs originating in the Republic of Korea,

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No L 14, 19. 1. 1991, p. 31.

⁽³⁾ OJ No L 122, 17. 5. 1991, p. 1.

⁽⁴⁾ OJ No L 107, 27. 4. 1990, p. 56.

decided to exclude from the scope of the proceeding SCTVs with a diagonal screen size of 15,5 cm (six inches) or less.

As no objections by any of the interested parties have been made to this course of action, the Council confirms the conclusions contained in recitals 6, 7 and 8 of Regulation (EEC) No 129/91 as well as the conclusions set out in recitals 9 and 10 of that Regulation concerning the consideration of SCTVs produced by the Community industry, as like products to the SCTVs exported from Hong Kong and China and the origin of those SCTVs. No comments were received from interested parties on those conclusions.

D. DUMPING

(a) Normal value

- (7) For the purpose of definitive findings, normal value was, in general, established on the basis of the same methods as those used in the provisional determination of dumping, after taking into consideration new facts and arguments presented by the parties.

(i) Hong Kong

- (8) One of the Hong Kong exporters claimed that normal value, which had been established for original equipment manufacture (OEM) sales on the basis of the resale price of a related trading company to the first independent purchaser adjusted by the allowable selling expenses — as mentioned in recital 13 of Regulation (EEC) No 129/91 — should have been established on the basis of the sales to the trading company which should be considered as unrelated, and that the commissions paid to the trading company should have been deducted from the normal value.

The Commission considers that there is no justification for treating the trading company as an unrelated company. The trading company and the producer are both fully owned subsidiaries of the same parent company. It does not perform any activities apart from trading and selling and carried out all the producer's sales of the product concerned in the domestic market during the reference period. Even if it was admitted that, as

this exporter claims, the manufacturing company carried out certain selling activities, it would still be true that the trading company performed selling activities normally carried out by a sales department of the manufacturer and this would fully justify its consideration as a related sales company.

In these circumstances, the Commission confirms its consideration of the two companies as forming part of the same economic entity and its determination of normal value as described in recital 13 of Regulation (EEC) No 129/91.

The Council confirms these conclusions.

- (9) Another Hong Kong exporter contested the method used to establish the constructed values. It argued that the sales, general and administrative expenses and the profit which had been used in constructing the values, as explained in recital 16 of Regulation (EEC) No 129/91, were excessive and did not adequately reflect its situation, mainly because the company whose SG & A expenses had been used was a stock exchange listed company and therefore required a larger and more specialized staff.

The Commission considers that the arguments put forward by the exporter are not duly justified. The mere allegation that a stock exchange listed company requires a larger and more specialized staff than a comparable fully private company cannot be considered sufficient argument to reduce the selling, general and administrative (SG & A) expenses used by the Commission in constructing the value. The investigation carried out by the Commission shows that this company and the one of which the SG & A expenses were taken in order to construct the normal value, may be considered comparable as far as costs and type of operation are concerned. No justifiable argument to the contrary has been put forward. In any event, this latter company was the only one with domestic sales on an OEM basis which could be considered representative since they exceeded 5% in volume of the sales on the same basis to the Community market. It was therefore considered that this company's figures which were verified by the Commission, form the most reasonable basis for the addition of SG & A expenses to manufacturing costs as provided for by Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88.

As far as profit is concerned, this exporter argued that the profit margin taken into consideration (i.e. 5 %) should not be the same as the one which had been used in the previous investigation concerning the Republic of Korea, the Hong Kong market being more competitive and having lower profit margins. The Commission considers that this argument neglects the fact that the Commission investigation, as indicated in recital 15 of Regulation (EEC) No 129/91, showed that the profit margin of the sole company with representative OEM sales in the domestic market exceeded the 5 % profit margin retained.

The Council confirms these conclusions.

(ii) *People's Republic of China*

- (10) No comments from any of the interested parties were received concerning the way in which the Commission had established normal values for all export sales from the People's Republic of China to the Community on the basis of the constructed values for comparable models manufactured in Hong Kong as set out in recitals 17 and 18 of Regulation (EEC) No 129/91.

The Council confirms these conclusions.

(b) **Export price**

(i) *Hong Kong*

- (11) For purposes of Regulation (EEC) No 129/91 the export prices were established on the basis of the prices paid or payable for export as all export sales were made either directly to unrelated importers or through unrelated trading companies in Hong Kong. No comments from any party have been made on this course of action and the Council confirms the conclusions of the Commission as set out in recital 19 of that Regulation.

(ii) *People's Republic of China*

- (12) The export prices for the Chinese exporters have been established on the basis of prices paid or payable where no related importers were involved and on the basis of resale prices to the first independent buyer adjusted to take account of all costs incurred between importation and resale including customs duties and a 10 % profit on turnover where exports were made to related importers as was the case for Fujian Hitachi Television Co. Ltd and Huaquiang Sanyo Electronics Co. Ltd as

described in recitals 20 and 21 of Regulation (EEC) No 129/91.

- (13) One of the exporters considered that the profit margin used in the construction of the export price could not be considered reasonable. In support of its consideration it was argued by the exporter that a 5 % profit margin had been used in previous proceedings involving consumer products, that SCTVs were a mature and well established product, the 10 % margin being therefore unrealistic, and that the margin of 10 % was not adapted to the size and organization of the related importers involved.

The Commission notes, however, that it has been consistent in its approach with the methodology used in the previous investigation concerning SCTVs originating in the Republic of Korea. The Commission does not contest the fact that the current generation of SCTVs can be considered as a technologically-mature product but this does not preclude the fact that the SCTV sector was, during both reference periods for the Korean and the Chinese and Hong Kong investigation, quite buoyant and profitable for independent importers. In this respect, it should be noted that in the case of imports of another consumer electronic product whose investigation period corresponded in large part to that of the Korean investigation a rate higher than 10 % was used for definitive determinations.

The information collected and verified from independent importers in the course of this proceeding has shown that the level of profit during the reference period did not depart significantly from that observed and used for definitive determinations in the Korean proceeding and therefore the use of a different profit rate was not justified. As far as the size and the organization of the related importer are concerned, the Commission retained the profit of one independent importer as explained in recital 17 of Regulation (EEC) No 1048/90, whose structure and size are comparable to both the related importers involved in that proceeding and those related importers involved in the present proceeding. This independent importer is of considerable size, is well established in the Community market, possesses an important network, deals with a wide product range and sells its products under a very well known brand name. These are obviously characteristics which are also common to the related importers and therefore the Commission considers that the size and organization aspects have been properly taken into account.

In the light of these considerations and those set out in recitals 20, 21 and 22 of Regulation (EEC)

No 129/91, the Council confirms the Commission's findings and conclusions.

(c) Comparison

- (14) As explained in Regulation (EEC) No 129/91 at recitals 23 to 27, all comparisons were made at the ex-works level for the exports originating in Hong Kong and at fob level for the exports originating in the People's Republic of China. For the purposes of ensuring 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 selling expenses, where a direct relationship between these differences and the sales under consideration could be satisfactorily demonstrated. Under the heading of selling expenses for export sales of Hong Kong exporters, adjustments were made for differences in commissions, transport, insurance, handling, loading and ancillary costs, payment terms, warranty expenses and salesmen's salaries and for export sales of Chinese exporters adjustments were made for differences in warranty expenses.

(i) Hong Kong

- (15) One of the Hong Kong exporters disputed the calculations made by the Commission in the determination of the cost of transporting the exported product to the Community. The Commission informed this exporter in writing of the basis of its calculation. The same exporter also disputed the allowance made by the Commission for salesmen's salaries on the export price on the grounds that these were not true salesmen. The Commission informed the exporter in writing that the results of the investigation had shown that these salesmen were wholly involved in direct selling activities and explained the basis for the allocation made on calculating the amount of the allowance. No further comments on any of these points were received by the Commission.
- (16) Another Hong Kong exporter claimed that a number of adjustments for differences in physical characteristics should have been made with regard to the model used in the calculation of the constructed value referred to in recital 16 of Regulation (EEC) No 129/91. It alleged, in particular, that the model on which the constructed value had been based may have obtained approval in accordance with German certification practice and may

have been equipped with an indoor rod antenna component.

The Commission cannot accept this claim as it could not obtain confirmation as to whether the alleged certification and incorporation of antenna actually existed and, if so, on what factual basis these adjustments should have been made and what impact those differences would have had on the price comparability. In any event, even if it was established that all models exported to Germany had obtained that approval, that all models were equipped with the indoor rod antenna component and that the costs indicated by this exporter were correct, the impact on the outcome of the investigation would be negligible.

(ii) People's Republic of China

- (17) The China Commercial Chamber of Audio-Video Products Exporters requested through its legal representative that a number of adjustments for physical characteristics be made on the models used in the calculation of the constructed value referred to in recital 17 of Regulation (EEC) No 129/91. In particular, the Chamber requested adjustments for the lack of cable tuner and earphone jacks and for the different number of preselections, differences in sound output available and differences in look and design. The Commission, in view of the arguments presented by the Chamber, recognized that a cable tuner was a feature relevant to consumers in Hong Kong and agreed to make the appropriate adjustment. The rest of the claimed allowances could not, on the contrary, be accepted by the Commission as they did not prove to be duly justified:

- the sound output available was considered not to be of relevance to consumers,
- a large majority of the units exported from the People's Republic of China were equipped with earphone jacks,
- due to the limited number of channels available for viewing in Hong Kong during the reference period the discussed number of preselections was irrelevant, and
- in so far as the look was concerned, it appeared that the cost of manufacturing a conventional-look receiver in Hong Kong was higher than that of a monitor-look receiver and that for comparable models of two of the Hong Kong exporters involved in the proceeding, the price of the conventional-look model was higher than that of the monitor-look model.

For all those reasons, only the request for the cable tuner adjustment can be accepted by the Commission which must reject the other claims.

The Council confirms these conclusions.

(d) Dumping margins

(18) Export prices were compared on a transaction-by-transaction basis with normal values for each of the exporters concerned with the exception mentioned below. The final examination of the facts shows the existence of dumping in respect of SCTVs originating in Hong Kong and the People's Republic of China from all the exporters involved, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

(19) In its provisional findings contained in recital 28 of Regulation (EEC) No 129/91, the Commission established five individual dumping margins for each of the Chinese exporters who had cooperated in the investigation. However, for the purposes of definitive findings, the Commission took the view that a single dumping margin should be established for all the Chinese exporters with the exception of the two Sino-Japanese joint venture exporters. This is justified by the fact that the Chinese exporters, even if they appear as independent companies which invoice their customers directly, have in fact a very limited, if any, degree of independence in their relationship with importers in other countries as they lack the possibility of establishing export prices and any other conditions or terms of sales by themselves. The three cooperating Chinese exporters (i.e. China Great Wall Industry Corporation, China National Electronics Import & Export Corporation and China National Light Industrial Products Import & Export Corporation) are members of the China Commercial Chamber of Audio and Video Products Exporters who acknowledged during the investigation that the export of SCTVs from all their members was made under their strict control. It was also declared by the Chamber that all exporters had to be members of the Chamber and that only the joint ventures could export and import products independently.

In addition, the Commission considered that maintaining individual dumping margins for the Chinese exporters subject to the control of the Chamber could provide and opportunity for circumvention as exports to the Community could

be channelled through the company with the lowest dumping margin.

The lack of independence of these exporters in conducting their export policy is further confirmed by the fact that the representation of the three Chinese exporters in this proceeding has been carried out by the Chamber and its legal representatives which at all times have submitted joint arguments and considerations for all three exporters without individualizing any positions. In these circumstances, the Commission considered that the establishment of three individual dumping margins led to purely arbitrary results which were not justified and that a single dumping margin, obtained by comparing all export transactions of the three companies with the normal values, should be established. All the cooperating Chinese exporters were informed by the Commission of its intention to follow this course of action.

(20) In so far as the other two Chinese exporters are concerned (i.e. the two Sino-Japanese joint ventures) the Commission was able to establish to its satisfaction that these companies, even if they did not operate fully on a market economy basis, enjoyed a high degree of independence in their operations basically because they were able to import components and export finished products without control from the Chamber or from any other body. Furthermore, the fact that these companies were able to transfer their profits, subject to certain administrative requirements, out of the People's Republic of China, ensured that these profit-oriented companies enjoyed a sufficient degree of independence which justifies their individual treatment. For these reasons the Commission considered that individual dumping margins should be established for the two joint venture exporters who cooperated with the investigation by comparing the normal values and the export prices established on the basis set out in recitals 10 and 12.

The Council confirms the above conclusions in recitals 18, 19 and 20.

(21) The weighted average margins, expressed as a percentage of cif frontier prices varied according to exporter as follows:

(i) Hong Kong

— Cony Electronic Products Ltd :	3,19
— Hanwah Electronics Ltd :	4,88
— Kong Wah Electronic Enterprises Ltd :	3,13
— Koyoda Electronics Ltd :	4,61
— Luks Industrial Co. Ltd :	4,17
— Tai Wah Television Industries Ltd :	2,16 ;

(ii) *People's Republic of China*

— Fujian Hitachi Television Co. Ltd :	17,04
— Huaquiang Sanyo Electronics Co. Ltd :	7,55
— All other cooperating Chinese exporters :	15,31.

E. INJURY

(22) The Commission concluded in its provisional findings that the Community SCTV industry had suffered material injury. It based this finding principally on the Hong Kong and Chinese exporters' rapid increase in volume of exports and in market share, the price undercutting practised by these exporters in the Community market and the price erosion resulting therefrom for the complainant producers' selling prices. In addition, further relocation of Community industrial capacity in third countries was foreseeable with consequent loss of Community employment and the continuation of the significant losses incurred by the complainant Community producers which increased dramatically in 1988.

(23) No new facts concerning these findings were submitted to the Commission after the publication of Regulation (EEC) No 129/91. Some exporters, both Chinese and from Hong Kong contested the cumulation of imports from both countries effected by the Commission when assessing the impact of dumped imports on the Community industry. The Commission, however, maintains its arguments set out in recitals 30 and 31 of that Regulation, i.e. that the SCTVs exported by both countries are homogeneous and similar to the Community products, that they competed with each other and with the Community products and were sold through the same distribution channels and that the volumes imported from each of the two countries taken in isolation can, in no way, be described as negligible. In addition, the Commission notes that the market behaviour of the Chinese and the Hong Kong exporters can be considered very similar. In these circumstances, in accordance with the standard practice in anti-dumping proceedings, it is considered appropriate to cumulate the injurious effect of imports from Hong Kong and from the People's Republic of China.

(24) Some exporters contested the model comparison which formed the basis for the Commission's analysis of undercutting. Their arguments on the question referred basically to the fact that the Community models used in the comparison offered an enhanced appeal to consumers as a result of the presence of a number of features or characteristics

incorporated in them and which were lacking in the exported models.

The China Commercial Chamber of Audio and Video Products Exporters argued that the Community models which had been used for the price undercutting comparison contained more and better features than the Chinese models with which they had been compared and proposed that either adjustments on the basis of market value differences should be made or that all Chinese models should be compared to the Community models with the fewest features used in the comparison. The Commission considered that accepting adjustments on the model comparison would imply a significant departure from the methodology used in the recent SCTVs Korean investigation which was confirmed in the present investigation. This methodology has not been challenged by any of the parties involved in either proceeding with the exception of the Chamber. Furthermore, it was considered that the wide variety of models and of technical characteristics would make a comparison based on adjustments too complicated and unworkable. However, the Commission, recognizing that some of the Community models used in the comparison may be over-featured in relation to the Chinese models, has proceeded to compare all but one of the Chinese models, with the exception of those exported by the joint venture exporters, with the Community models incorporating the fewest features.

(25) On that basis and applying the method of comparison explained in recital 39 of Regulation (EEC) No 129/91, the overall average undercutting results expressed at cif level is 16,85 % for the exporters represented by the China Commercial Chamber of Audio and Video Products Exporters.

For all the other exporters the undercutting comparison findings as set out in recital 40 of that Regulation are hereby confirmed.

(26) No other arguments or facts concerning determination of injury were presented to the Commission.

The Council confirms the conclusions of the Commission as set out in recitals 30 to 39 and 41 to 48 of Regulation (EEC) No 129/91 and in recitals 22 to 25 of this Regulation.

F. CAUSATION OF INJURY

(27) In recitals 49 to 53 of Regulation (EEC) No 129/91, the Commission concluded that the cumulated dumped imports from Hong Kong and the People's Republic of China had caused material injury to the Community industry. The Commis-

sion found that the rapid increase of Hong Kong and Chinese low-priced imports coincided with an equally rapid loss of market share by the Community industry, price erosion for the Community's SCTV models and heavily-increased financial losses on the part of Community companies together with an accelerated relocation of Community producers' assembly facilities outside the Community.

In this respect, the Commission notes that prices play a very important role in the market and price undercutting due to dumping has therefore an immediate negative effect on the prices practised by the Community industry. It should be stressed, as already indicated in recital 40 of Regulation (EEC) No 129/91, that the effects of the price undercutting found do not refer only to the models of SCTVs in the Community which may be considered to be directly comparable to the Hong Kong and Chinese exports, but that they apply to the whole range including the newest and most enhanced models. Undercutting at the lower-priced end of the range — the major volume market segment — naturally has a depressive effect on price throughout the whole SCTV range by reducing the consumer's perception of the value of the product and of the different features of the various models.

No new facts or new arguments concerning these findings were submitted to the Commission after the publication of Regulation (EEC) No 129/91 Regulation. The Council therefore confirms the conclusions of the Commission as set out in recitals 49 to 53 of that Regulation.

G. COMMUNITY INTEREST

- (28) No further facts or arguments concerning this subject were submitted to the Commission by any of the parties. The Council therefore confirms the Commission's conclusions set out in recitals 54 to 57 of Regulation (EEC) No 129/91, that it is in the Community's interest to eliminate the injurious effects to the Community industry of the dumping determined. The benefits of such protection for the current viability and future development of that industry outweigh the possible disadvantages, of a

temporary nature, for the consumer in terms of limited price increase for certain imported SCTVs.

H. DUTY

- (29) Provisional measures took the form of anti-dumping duties. These were imposed at the level of the dumping margins determined, with the exception of one Chinese joint-venture exporter for which the level imposed was that adequate to remove the injury caused.
- (30) Although the Commission's findings on injury set out in Regulation (EEC) No 129/91 have now been modified, the level of duty necessary to remove the injury remains higher than the dumping margin definitively determined, with the exception of one Chinese joint venture exporter. Therefore, duties should be imposed at the level of the dumping margins found except for Fujian Hitachi Television Co. Ltd for whom the duty should be imposed at a level sufficient to eliminate the price undercutting.
- (31) As explained above in recital 19, the Commission decided to establish a single dumping margin for all the Chinese exporters with the exception of the two joint ventures concerned and, consequently, a single duty was established for these companies.

The Council confirms these conclusions.

I. COLLECTION OF PROVISIONAL DUTIES

- (32) In view of the dumping margins established, and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts collected by way of provisional anti-dumping duties should be definitively collected to the extent of the amount of the duty definitively imposed,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of small-screen colour television receivers with a diagonal screen size of more than 15,5 cm but no greater than 42 cm, whether or not combined in the same housing with a radio broadcast receiver and/or a clock, falling within CN code ex 8528 10 71 (Taric code: 8528 10 71*10) and originating in Hong Kong or in the People's Republic of China.

2. The rate of duty shall be 4,8 % of the net, free-at-Community-frontier price, before duty for products originating in Hong Kong (Taric additional code : 8500) and 15,3 % of the net, free-at-Community-frontier price, before duty for products originating in the People's Republic of China (Taric additional code : 8506).

However, the rates of duty for products specified in paragraph 1 and manufactured and sold for export by the following companies shall be as set out below, expressed as a percentage of the net, free-at-Community-frontier price, before duty :

	<i>Rate of duty %</i>	<i>Taric additional code</i>
<i>(a) Hong Kong</i>		
Cony Electronic Products Ltd	3,1	8494
Hanwah Electronics Ltd	4,8	8495
Kong Wah Electronic Enterprises Ltd	3,1	8496
Koyoda Electronics Ltd	4,6	8497
Luks Industrial Co. Ltd	4,1	8498
Tai Wah Television Industries Ltd	2,1	8499

(b) People's Republic of China

Fujian Hitachi Television Co. Ltd	13,1	8504
Huaquiang Sanyo Electronics Co. Ltd	7,5	8505

3. The provisions in force concerning customs duties shall apply to the said duty.

Article 2

The amounts collected or secured by way of provisional anti-dumping duty pursuant to Regulation (EEC) No 129/91 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 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, 15 July 1991.

For the Council
The President
P. BUKMAN