COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 1 October 1991

Proposal for a

COUNCIL REGULATION (EEC)

imposing a definitive anti-dumping duty on imports of video tapes in cassettes originating in the People's Republic of China and collecting definitively the provisional duty

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. By Regulation (EEC) No 1034/91[1] the Commission imposed a provisional anti-dumping duty on imports of video tapes in cassettes originating in the People's Republic of China. That duty was extended for a maximum period of two months by Regulation (EEC) No 2525/91[2].

2. Following the imposition of provisional measures, the Commission has continued its investigation and has examined the arguments of the complainants and exporters which have requested to be heard.

3. For purposes of the Provisional Duty Regulation, normal value was based on prices paid or payable in the Community. This was done because no producers in third countries were found who were willing to cooperate in the investigation. Subsequently, several Hong Kong producers stated their willingness to cooperate and the Commission was able to collect and verify information from those producers. Normal values could then be established using Hong Kong as an analogue market economy country.

4. As a result of the use of different normal values, dumping margins have been substantially modified.

5. In the provisional findings, a single uniform dumping margin was established for all Chinese exporters. For purposes of definitive findings the Commission has concluded that those exporters which are joint ventures with foreign participation are able to freely transfer their profits out of China. In these circumstances and following the approach used in the small screen colour television receivers case (Regulation (EEC) No 2093/91) individual dumping margins have been established for such imports.

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(1) O.J. n° L 106, 26.4.1991, p. 15
(2) O.J. n° L 236, 24.8.91, p. 1

6. Provisional findings that the Community video cassette industry has suffered material injury in terms of loss of market share, price undercutting, price depression and subsequent loss of profitability, were confirmed. It was also confirmed that the dumped imports from the People's Republic of China had, in isolation, caused material injury to the Community industry. Levels of duty necessary to remove the injury were also confirmed.

7. It is also confirmed - no new facts or arguments having been presented - that it is in the Community's interest to eliminate the injurious effects of the dumping determined. The benefits of such protection for the current viability and future development of the Community industry outweigh the temporary disadvantages to consumers of limited price increases for certain imported cassettes.

8. In the light of the economic structure of the exporters and price variations for very similar models, the Commission considers that the duty should take the form of a variable duty equal to the difference between price per cassette net, free at Community frontier, not cleared through customs, and a floor price established on the basis of the normal value for each individual model.

9. It is proposed therefore to impose definitive anti-dumping duties in the form of a variable duty and in the amount established in Article 1(2) on imports of video tapes in cassettes originating in the People's Republic of China.

   It is also proposed that the amounts secured by way of the provisional duty should be collected up to the levels of the definitive duties finally determined.

Proposal for a

COUNCIL REGULATION (EEC) NO

of

imposing a definitive anti-dumping duty on imports of video tapes in cassettes originating in 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 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 1034/91[(2)], (hereinafter the Provisional Duty Regulation), imposed a provisional anti-dumping duty on imports into the Community of video tapes in cassettes originating in the People's Republic of China and falling within CN Code ex 8523 13 00. The Council, by Regulation (EEC) No[(3)] extended this duty for a period not exceeding two months.

(1) OJ No L 209, 2/1/1988, p. 1.
(2) OJ No L 106, 26/4/1991, p. 15.
(3) OJ No L

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.

C. PRODUCT UNDER CONSIDERATION . LIKE PRODUCT . COMMUNITY INDUSTRY

6. No comments from any of the interested parties were received concerning the conclusions of the Commission as set out in recitals 7 to 11 of the Provisional Duty Regulation, relating to the product under consideration, the like product and the Community industry. The Council confirms these conclusions.

D. DUMPING

a. Normal Value

7. For the purposes of provisional findings the Commission for the reasons and in the manner described in recitals 12 to 17 of the Provisional Duty Regulation, established normal value on the basis of the price payable in the Community for the like product.

8. The Chinese exporters strongly objected to the use of Community prices as normal value and requested that normal value should be established, in accordance with the provisions of Article 2 (5) of Regulation (EEC) in 2423/88, by using Hong Kong as a market economy for reference. In this context, several Hong Kong producers of video cassettes, which had previously refused to cooperate in the investigation, stated, immediately prior to the imposition of provisional duties, their willingness to cooperate with the Commission in the conduct of the investigation.

9. The complainants argued that Hong Kong could not be used as a reference market economy territory at this stage of the proceeding because the producers now willing to cooperate had previously refused cooperation and because there appeared to be close links between some of the Chinese exporters and some of the Hong Kong producers willing to cooperate with the investigation.

10. The Commission considered that neither of the complainants arguments provide sufficient grounds not to select the Hong Kong market as reference for establishing normal value. The producers in Hong Kong are not interested parties in the proceeding and therefore their refusal to cooperate cannot be judged in the light of the provisions of Article 7 (7)(b) of Regulation (EEC) No 2423/88. As to the alleged links of these Hong Kong producers with Chinese exporters, the Commission considers that, insofar as it was able to satisfactorily verify all data necessary for the purposes of the investigation the existence of those links is irrelevant for the establishment of normal value.

11. In the light of the above conclusions, the Commission addressed questionnaires to several Hong Kong producers and obtained satisfactory replies from two of them. The information contained in those replies was verified by means of on spot visits.

12. Normal value was established on the basis of the prices paid or payable for the sales of the like product in the ordinary course of trade in Hong Kong. The Commission noted that these sales in the Hong Kong domestic market allowed the producers a considerable profit margin.

For those models which were not sold in the Hong Kong domestic market normal value was constructed on the basis of the average cost of production plus the profit margin realised on the sales of the most sold model in Hong Kong which comprised substantially all the domestic sales of the product concerned in the Hong Kong market. The selling, general and administrative expenses included in the cost of production were calculated by obtaining a weighted average for the two producers visited.

The Council confirms these conclusions.

b. Export price

13. Hong Kong

For the purposes of the Provisional Duty Regulation, the export prices were established on the basis of the prices paid or payable for the products sold for export to the Community. No comments from any party have been made on this course of action except insofar as the situation of companies with foreign participation is concerned. These arguments are considered in recital 18 below. The Council confirms the course of action followed by the Commission as set out in recital 18 of the Provisional Duty Regulation.

C. Comparison

14. As explained in the Provisional Duty Regulation at recitals 20 and 21, all comparisons were made at the ex-factory basis and at the same level of trade. 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 transport, packing, credit and other selling expenses.

15. The China Association of Enterprises with Foreign Investment (CAEFI), representing several cooperating Chinese exporters, alleged that Chinese produced video cassettes were of a significantly lower quality than that of Hong Kong produced cassettes, mainly due to the use of inferior raw materials and processing methods, and requested an adjustment for differences in physical characteristics which it quantified at 20%.

    The complainant contested the request of the exporters on the basis that both Chinese and Hong Kong producers were manufacturing the tapes under the same licence and should therefore obtain the same level of quality and that consumers made no distinction between Hong Kong and Chinese produced cassettes.

16. After examination of the facts, the Commission considers that there are no differences in comparable physical characteristics which justify an allowance as far as the comparison between Hong Kong and Chinese produced video cassettes is concerned. Furthermore, the Commission considers that there is no difference in the consumer's perception of Hong Kong and Chinese made video cassettes. Consequently, the exporters' claim was rejected.

    The Council confirms these conclusions.

d. Dumping margins

17. For purposes of its provisional findings, the Commission established a single dumping margin for all Chinese exporters. This was done

since the People's Republic of China is a non-market economy and, in accordance with previous Community practice, the Commission considered that, because of the lack of independence of the exporters, a single dumping margin should be established to avoid purely arbitrary results and the likelihood of circumvention.

18. The Shenzhen Video Tape Manufacturers Association, acting on behalf of one cooperating exporter and CAEFI on behalf of four cooperating exporters, argued that these exporters were joint ventures with foreign participation which operated in an environment very similar to that of market economy companies and requested that, because of their specific characteristics, individual company findings should be determined for them. In addition the Shenzhen Video Tape Manufacturers Association requested that the joint venture exporters which did not reply to the questionnaire be granted a different treatment than that given to State owned companies.

19. The Commission considered that these cooperating Chinese exporters had supplied sufficient evidence to determine that they were genuinely joint venture companies with foreign investment, were able to freely establish their export prices and subject to certain administrative requirements, were able to transfer profits from China to their foreign shareholders.

The Commission considered that this was also the case for two other cooperating exporters which had supplied information indicating that they were joint ventures with foreign participation.

In these circumstances and following the Community's previous practice as set out in 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(4), the Commission concluded that individual dumping margins could be determined for those companies.

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(4) OJ No L 195, 18/7/91, p. 1.

20. As to the remaining three cooperating exporters, namely Dong Guan Changan Jiekou Magnetic Tape Factory, Long Gung Xin Shen Fung Fu Plastic Mfg. and Shantou Ocean Audio-Video Gen. Corp., the Commission received no evidence or information indicating that these companies were joint ventures with foreign participation. The Commission considered that, because of their lack of independence, the same approach as the one set out in recital 22 of the Provisional Duty Regulation should be applied and a single dumping margin calculated for these three exporters.

The Council confirms the above conclusion.

21. On this basis, export prices were compared on a transaction by transaction basis with normal values for each of the exporters concerned with the three exceptions mentioned in recital 20 above. The final examination of the facts shows the existence of dumping in respect of the product concerned originating in 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.

22. The weighted average margins, expressed as a percentage of CIF Community frontier prices varied according to the exporter as follows:

Acme Cassette Manufacturing	9,3%
Buji Bantian Oscar Video Products Fty.	5,1%
Fuzhou Wonderful Video Tapes Co. Ltd.	6,4%
Fuzhou Fortune Video Tapes Co. Ltd.	3,8%
Nan-Hua Magnet Electricity Co. Ltd.	5,4%
Song Gang Hang Sing Cassette Factory Song Gang	1,3%
All other Chinese exporters	12,5%

23. For those producers that neither replied to the Commission's questionnaire, nor otherwise made themselves know, dumping was determined on the basis of the facts available in accordance with the provision of Article 7 (7) (b) of Regulation (EEC) No 2423/88. In this conection, the Commission considered that the result of its investigation concerning other companies provided the most apropriate

basis for determination of the margin of dumping. Since it could create an opportunity for circumvention of the duty, if the dumping margin for those producers was any lower than the highest dumping margin found in their respective countries determined with regard to those producers who had cooperated in the investigation, it is considered appropriate to use the highest dumping margin found in their respective country for these groups of producers.

E. INJURY

24. The Commission concluded in its provisional findings (See recitals 33 to 35) that the Community industry had suffered material injury as a result of the dumped imports of video tapes in cassettes originating in the People's Republic of China.

25. Both CAEFI and the Shenzen video Tape Manufacturers Association objected to the Commission's findings concerning injury by indicating that:
   - the volume of sales of the Community producers increased between 1986 and 1989,
   - stocks decreased in the same period,
   - the decrease in capacity utilisation between 1986 and 1989 was the result of an increase in capacity and not of the existence of dumped imports,
   - the decrease in employment was due to cost rationalization and automatization,
   - one of the Community producers already incurred losses in 1986 at a time when imports of video tapes in cassettes from China were minimal.

26. The Commission considers that these arguments neglect the basic facts. Imports of the product concerned from the People's Republic of China increased from 0,74 million units in 1986 to 38,67 million units in 1989, the market share of the Community producers decreased in a fast growing market and their prices were significantly depressed decreasing by 28,6% from 1986 to 1989.

These facts are by themselves sufficient to establish the existence of material injury to the Community industry, taking into account that Article 4(2) of Regulation (EEC) No 2423/88 does not require that all the factors listed therein show a negative trend.

27. In addition to these arguments, the Commission notes that the exporters have not objected to the findings concerning price undercutting as set out in recital 28 of the Provisional Duty Regulation, except to request a 40% adjustment instead of the 20% used. The exporters based their request for this further adjustment on pretended differences in physical characteristics among Community, Hong Kong and Chinese produced video tapes.

Given the very similar nature of the Hong Kong and Chinese produced video tapes (see recital 16), the Commission considers that the evidence submitted is not conclusive enough to indicate that any adjustment for differences in physical characteristics and the perceptions of imported and Community produced video tapes by consumers should differ from that used provisionally.

In view of the above the Commission confirms its conclusions concerning the level of undercutting (59,9%) and concerning the existence of material injury to the Community industry.

The Council confirms these conclusions.

F. CAUSATION OF INJURY

28. In recitals 36 to 38 of the Provisional Duty Regulation, the Commission concluded that the imports of video tapes in cassettes originating in the People's Republic of China had caused material injury to the Community industry.

The representatives of the exporters have contested this conclusion. In support of their contention they have argued that the only fact alleged by the Commission to establish the existence of a causal link between the dumped Chinese imports and the existence of material injury to the Community industry was simultaneity and that this time factor by itself is not sufficient, according to the provisions of Article 4 of Council Regulation (EEC) No 2423/88, to establish the existence of a causal link. The exporters have argued that the injury suffered by the Community industry must have been caused by imports from other sources.

29. The Commission cannot accept these arguments. Simultaneity is not the only factor which determines the existence of a causal link. The Commission notes that the Chinese imports arrive in the Community market at very low prices and, as the market is very price sensitive, this results in a general price depression of the Community prices which prevents the Community producers from increasing their prices and restoring their profitability to acceptable levels.

30. As to the argument concerning injury caused by imports from other sources the Commission considers that the fact that the increase of market share of the Chinese imports has been done at the expense of the Hong Kong and Korean exports does not render the causal link non existing nor the injury non material. The very low prices of the Chinese imports and the heavy price undercutting have caused injury by not allowing the community industry to reach acceptable levels of profitability which might secure its continuing operation. The exporters also referred to the surge of imports from unidentified sources as a possible cause of injury to the Community industry. The Commission notes that none of the parties involved has provided any information on prices of these imports which are not known to undercut Community prices. However, even if it was admitted that these imports from unidentified sources were undercutting Community prices and causing injury to the Community industry, the volume and low prices of the dumped imports are such that this would not modify the finding that the Chinese exports, taken in isolation, have caused material injury to the Community industry.

In view of the above, the Commission confirms its conclusions in recitals 36 to 38 of the Provisional Duty Regulation.

The Council confirms these conclusions.

G. COMMUNITY INTEREST

31. 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 39 to 47 of the Provisional Duty Regulation, 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 increases for certain imported video tapes in cassettes.

H. DUTY

(a) Level of duty

32. Provisional measures took the form of anti-dumping duties. These were imposed at the level of the increase in price considered necessary to prevent injury being caused during the proceedings. This duty was established (recital 49 of the provisional Duty Regulation) at the level of 25,8%.

33. Subsequently both the exporters and the complainant contested the method followed by the Commission on establishing the level of duty necessary to remove the injury.

34. The Commission considers that, since the dumping margins definitively determined are significantly below the level required to eliminate the injury caused, neither the argument of the exporters nor that of the complainants has any practical relevance in terms of the final result.

35. As the dumping margins established are in all cases lower than the percentage needed to remove the injury, duties should be established at the level of the dumping margins.

The Council confirms these conclusions.

(b) Form of duty

36. In the light of the economic structure of the exporters and price variations for very similar models, the Commission considers that the duty should take the form of a variable duty equal to the difference between price per cassette net, free at Community frontier, not cleared through customs, and a floor price established on the basis of the normal value for each individual model.

In order to avoid difficulties in the application of the duties should developments in the market result in the appearance of cassettes with different lengths from those known at present, the models of cassettes are to be described in such a way that all possible future combinations are included.

37. The Commission notes that the variable duty provides individual results for the cooperating Chinese joint venture exporters as the duty for each one of them will be the equivalent to the difference between their export prices and the normal value.

The Council confirms these conclusions.

I. COLLECTION OF PROVISIONAL DUTIES

38. 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 video tapes of VHS standard in cassettes falling within CN Code ex 8523 13 00 (TARIC codes: see Annex) and originating in the People's Republic of China.

2. The amount of the duty shall be equal to the difference between the minimum prices listed below and the price per cassette net, free at Community frontier, not cleared through customs for cassettes with tapes having a playing time :

up to and including 30 minutes	0.76 ECU
exceeding 30 minutes and up to 60 minutes	0.92 ECU
exceeding 60 minutes and up to 90 minutes	1.08 ECU
exceeding 90 minutes and up to 120 minutes	1.26 ECU
exceeding 120 minutes and up to 180 minutes	1.57 ECU
exceeding 180 minutes and up to 195 minutes	1.74 ECU
exceeding 195 minutes and up to 240 minutes	1.95 ECU
exceeding 240 minutes	2.22 ECU

3. The provisions in force concerning customs duties shall apply.

ARTICLE 2

Amounts secured by way of the provisional anti-dumping duty imposed by Regulation (EEC) No 1034/91 will be definitively collected to the extent of the amounts resulting from the application of the definitive duty as fixed in Article 1 (2).

Secured amounts in excess of these amounts will be released.

ANNEX :

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,

For the Council
The President

ANNEX :

CN CODE	TARIC SUBHEADING	DESCRIPTION
		- - - Video tapes :
		- - - - In cassettes :
		- - - - - falling under VHS standards :
		- - - - - - having a playing time :
85231300	* 21	- - - - - - - up to and including 30 minutes
85231300	* 23	- - - - - - - exceeding 30 minutes and up to 60 minutes
85231300	* 25	- - - - - - - exceeding 60 minutes and up to 90 minutes
85231300	* 27	- - - - - - - exceeding 90 minutes and up to 120 minutes
85231300	* 28	- - - - - - - exceeding 120 minutes and up to 180 minutes
85231300	* 31	- - - - - - - exceeding 180 minutes and up to 195 minutes
85231300	* 33	- - - - - - - exceeding 195 minutes and up to 240 minutes
85231300	* 35	- - - - - - - exceeding 240 minutes
85231300	* 39	- - - - - Other
85231300	* 49	- - - - Other

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