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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2380/95

of 2 October 1995

imposing a definitive anti-dumping duty on imports of plain paper photocopiers originating in Japan

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community (1), and in particular Article 23 thereof,

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 (2), and in particular Articles 12, 14 and 15 thereof,

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

Whereas :

A. PROCEDURE

(1) On 2 August 1985, the Commission announced the initiation of an anti-dumping proceeding concerning imports of photo-copying apparatus originating in Japan (3). A provisional anti-dumping duty was imposed on 26 August 1986 by Commission Regulation (EEC) No 2640/86 (4). On 24 February 1987, by Regulation (EEC) No 535/87 (5), the Council imposed a definitive anti-dumping duty on imports of plain paper photocopiers (hereinafter referred to as 'PPCs') originating in Japan. At the same time, an undertaking was accepted (6) from one exporter, Kyocera, which had discontinued the production of PPCs, to give advance notice to the Commission should it decide to recommence exports to the Community.

(2) Following the introduction of these measures, a number of investigations were initiated pursuant to Article 13 (10) of Regulation (EEC) No 2423/88 in respect of the production or assembly of PPCs in the Community by Japanese exporters. These investigations resulted in undertakings being accepted by the Commission from exporters whose PPC models, produced or assembled in the Community, had originally been found to have a weighted average value of parts or materials of Japanese origin or more than 60 % of the total value of all parts or materials (7).

(3) Following the publication in August 1991 of a notice (8) of the impending expiry of the measures in force in respect of imports from Japan, the Commission received a request for a review lodged by the Committee of European Copier Manufacturers (Cecom) allegedly on behalf of producers representing a major proportion of the total Community production of PPCs. This review

(1) OJ No L 349, 31. 12. 1994, p. 1. Regulation as last amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).
(2) OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).
(3) OJ No C 194, 2. 8. 1985, p. 5.
(4) OJ No L 239, 26. 8. 1986, p. 5.
(5) OJ No L 54, 24. 3. 1987, p. 12.
(6) Commission Decision 87/135/EEC (OJ No L 54, 24. 2. 1987, p. 36).
(7) See Council Regulation (EEC) No 3205/88 (OJ No L 284, 19. 10. 1988, p. 36); Commission Decision 88/519/EEC (OJ No L 284, 19. 10. 1988, p. 60); Commission Decision 88/638/EEC (OJ No L 355, 23. 12. 88, p. 66); Council Regulation (EEC) No 4017/88 (OJ No L 355, 23. 12. 1988, p. 1); Commission Decision 89/116/EEC (OJ No L 43, 15. 2. 1989, p. 54); Council Regulation (EEC) No 359/89 (OJ No L 43, 15. 2. 1989, p. 1); Commission Decision 89/309/EEC (OJ No L 126, 9. 5. 1989, p. 38); Commission Decision 90/47/EEC (OJ No L 34, 6. 2. 1990, p. 28).
(8) OJ No C 222, 27. 8. 1991, p. 2.

request was limited to PPCs with a capacity to operate at a speed of up to 75 copies per minute of A4 size paper. In accordance with Article 15 (3) of Regulation (EEC) No 2423/88, it contained evidence purporting to show that the expiry of the anti-dumping measures in force would again lead to injury or threat thereof. The review request also covered the undertakings given under Article 13 (10) of Regulation (EEC) No 2423/88.

On 16 July 1992, Cecom submitted a supplement to its review request, asking for the inclusion in the review of PPCs capable of operating at a speed of more than 75 copies per minute of A4 size paper. This supplementary request contained evidence purporting to show that such PPCs originating in Japan were being dumped and were, through the effect of dumping, causing injury to the Community industry.

(4) On 14 August 1992, in a notice published in the *Official Journal of the European Communities* [1]; the Commission announced the initiation of a review investigation in accordance with Articles 14 and 15 of Regulation (EEC) No 2423/88.

(5) The Commission notified the exporters and importers known to be concerned, the representatives of the exporting country and known producers in the Community, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(6) All complainant producers in the Community replied to the questionnaire and made their views known in writing. In addition, some information was received from Kodak Ltd, Hemel Hempstead, United Kingdom. Almost all exporters together with their related importers and production facilities in the Community replied to the questionnaire and made their views known in writing. The only known exporters in Japan that did not reply to the questionnaire was Sanyo Electric Co., Osaka. Two other Japanese companies, Kyocera Corp., Kyoto, and Fuji Xerox Co., Tokyo, declared they had not exported PPCs to the Community during the investigation period of the review. Kyocera Corp. indicated that it had not produced PPCs since 1986 and asked to be relieved of its undertaking to give the Commission sufficient notice should it recommence exports to the Community [2]. One Japanese trading company, Mitsui Co Ltd, Tokyo, also replied to the questionnaire. Three unrelated importers, Agfa Gevaert NV, Mortsel, Belgium, Infotech Europe BV, 's-the Netherlands, and Lanier Europe BV, Sassenheim, the Netherlands, replied to the questionnaire and made their views known in writing. All parties who so requested were granted a hearing.

(7) The Commission sought and verified all information it deemed necessary for the purpose of a determination and visited the premises of the following companies :

— *complainant producers in the Community :*

  — Océ Nederland BV, with headquarters and factory in Venlo, the Netherlands,

  — Olivetti-Canon Industriale SpA, with headquarters and factory in Ivrea, Italy,

  — Rank Xerox Ltd with headquarters in Marlow, United Kingdom, and factories in Mitcheldean, United Kingdom, Venray, the Netherlands, and Lille, France ;

— *producers/exporters in Japan :*

  — Canon Inc., Tokyo,

  — Copyer Co. Ltd, Tokyo,

  — Konica Corp., Tokyo,

  — Matsushita Electric Industrial Corp., Osaka,

  — Minolta Camera Co. Ltd (since re-named Minolta Co. Ltd), Osaka,

  — Mita Industrial Co., Osaka,

  — Ricoh Co. Ltd, Tokyo,

  — Sharp Corp., Osaka,

  — Toshiba Corp., Tokyo ;

— *related importers in the Community :*

  — Canon Deutschland GmbH, Neuss, Germany,

  — Canon France SA, Le Blanc Mesnil, France,

  — Canon (UK) Ltd, Wallington, United Kingdom,

  — Develop Dr Eisbein GmbH & Co., Gerlingen, Germany,

  — Gestetner Holdings PLC, London, United Kingdom,

  — Konica Bureautique SA,. Nanterre, France,

  — Konica Business Machines International GmbH, Hamburg, Germany,

  — Matsushita Business Machines (Europe) GmbH, Neumünster, Germany,

  — Minolta France SA, Carrières-sur-Seine, France,

[1] OJ No C 207, 14. 8. 1992, p. 16.
[2] See recital 1, footnote [6].

— Minolta GmbH Business Equipment Operation, Langenhagen, Germany,

— Minolta Italia srl, Buccinasco, Italy,

— Minolta UK Ltd, Milton Keynes, United Kingdom,

— Mita Deutschland GmbH, Steinbach, Germany,

— Mita Europe BV, Hoofddorp, the Netherlands,

— Mita Italia SpA, Agrate, Italy,

— NRG Italia SpA, Milano, Italy,

— NRG-Nashua France SA, Créteil, France,

— Panasonic Deutschland GmbH, Hamburg, Germany,

— Panasonic Europe Ltd, Uxbridge, United Kingdom,

— Panasonic Italia SpA, Milano, Italy,

— Panasonic UK Ltd, Bracknell, United Kingdom,

— Ricoh Deutschland GmbH, Eschborn, Germany,

— Ricoh Europe BV, Amstelveen, the Netherlands,

— Ricoh France SA, Neuilly-sur-Seine, France,

— Ricoh Italia, SpA, Verona, Italy,

— Selex Europe BV, Amstelveen, the Netherlands,

— Selex Italia SpA, Milano, Italy,

— Selex (UK) Ltd, Croydon, United Kingdom,

— Sharp Electronics (Europe) GmbH, Hamburg, Germany,

— Sharp Electronics (UK) Ltd, Manchester, United Kingdom,

— Toshiba Europa GmbH, Neuss, Germany,

— Toshiba Informationssysteme (Deutschland) GmbH, Neuss, Germany,

— Toshiba Information Systems (UK) Ltd, Weybridge, United Kingdom,

— Toshiba Systèmes (France) SA, Puteaux, France ;

— *unrelated importers in the Community:*

— Agfa Gevaert NV, Mortsel, Belgium.

(8) The investigation of dumping covered the period 1 July 1991 to 30 June 1992 (investigation period).

(9) Owing to the unusual complexity of a number of legal, technical and policy issues dealt with by the investigation, and the very large volume of data and submissions received from parties concerned, often requiring time limits to be extended, the investigation significantly exceeded the period of one year recommended for investigations in Article 7 (9) (a) of Regulation (EEC) No 2423/88. For similar reasons, it had also already taken the Commission close to six months following the end of the five-year period of operation of the original measures, 24 February 1992, to initiate this review investigation. In accordance with Article 15 (3) of Regulation (EEC) No 2423/88, the original measures have remained in force during this entire period.

(10) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive measures.

They were also granted a period within which to make representations subsequent to these disclosures.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product concerned

(11) In accordance with Article 7 (9) (b) of Regulation (EEC) No 2423/88, the anti-dumping proceeding which was initiated on 2 August 1985 concerning imports of photocopying apparatus originating in Japan, continues as long as the measures have not expired or been repealed or terminated. There is therefore no change in the product concerned by the proceeding. The product was defined as 'photo-copying apparatus incorporating an optical system', 'formed by four basic elements, i.e. image processing, photo-conducting or developing, transfer or fixing and paper transport system' [1], or in short as 'plain paper photocopiers (PPCs)' [2].

(12) As the name indicates, such copiers use plain paper instead of coated paper to make copies. PPCs have now almost entirely replaced coated paper copiers for normal applications. Whereas coated paper copiers use a direct process to transfer the image of an original document onto a chemically treated sheet of paper, PPCs are based on an indirect process, whereby the optical system (comprising mainly a light source, a condenser, lenses, mirrors,

[1] See recital 1 footnote [3].
[2] Recital 1 of Regulation (EEC) No 2640/86, see recital 1 footnote [4] of this Regulation.

prisms or an array of optical fibres) projects the image of the original document onto a light-sensitive surface (usually a drum or plate). The image is then developed (often by means of a powdered dye), transferred onto ordinary paper (normally by an electrostatic field) and fixed thereon (by heat and/or pressure). Coated paper or direct process copiers, falling within CN code 9009 11 00, are therefore a product different from the PPCs which are the subject of this proceeding.

PPCs often consist of several separate modules, which are assembled only at the customer's premises. In such cases, all those modules are part of the PPC, whether imported together or separately, unless they qualify as truly optional equipment not included in the standard configuration of the PPC.

(13) The above product description of PPCs entails that digital copiers (black and white or full colour) do not fall within the scope of the product which is the subject of the proceeding. Even if the scanner used by a digital copier to read the original document could be considered an 'optical system', a digital copier does not 'project' an image onto a light-sensitive surface, but rather re-composes the original image, after it has been transformed by the image processor into digital signals, into a new image, with or without changes to the original image. It is this new image which is transmitted by a laser onto a light-sensitive surface. When digital copiers are connected to computers, they are not even dependent on an original document for their input.

2. Product investigated

(14) In terms of its product scope, a review investigation may cover the entire product concerned by the proceeding. For the purpose of this review it was, however, not considered necessary to investigate a number of product types which had already been exempted from the original measures and which the Community industry did not request to be included in the review. These comprised analogue full-colour copiers, aperture card reader printers and microfilm printers, white-board copiers and large-format copiers capable of making copies of A2 size and larger from originals larger than A2 size [1]. This means that highlight PPCs, which reproduce only a few colours to draw attention to certain segments of a document, and A2 PPCs, capable of making A2 size copies (but not larger) from A2 size originals or larger, were included in the review investigation.

(15) PPCs capable of operating at a speed of more than 75 copies per minute of A4 size paper were included in the review investigation, as requested by the Community industry. These products are clearly PPCs as defined in the product description of the proceeding [2]. The only reason for their exclusion from the original measures was that at the time of the original investigation segments [3] 5 and 6 were not imported from Japan and segment 6 was not produced by the Community industry. In its supplementary request for a review, Cecom submitted sufficient evidence that segment 5 PPCs had since been imported from Japan at dumped prices and were causing injury to the complainant Community industry, producing in the adjacent segments 4 and 6, thus warranting the inclusion of PPCs with a capacity of over 75 copies per minute of A4 size paper within the scope of the review investigation.

This inclusion was commented on by several exporters and importers. They contested the view that the product scope of an Article 15 review can be as large as the product definition of the proceeding and considered that such a review should be limited to the product types covered by the measures. However, the design, production and marketing of particular product types often evolves over time, with new types still being essentially the same product. For PPC's, for instance, the market trend has been towards more productive, larger and faster types of PPCs, the essential characteristics of which are, however, still the same. If the Commission were to be prevented from investigating new types of the same product in an Article 15 review, simply because those types had not yet been produced at the time of the original investigation, a new proceeding would have to be opened.

[1] See the product descriptions in Article 1 (4) of Regulation (EEC) No 535/87.

[2] See for instance the first indent of Article 1 (4) of Regulation (EEC) No 535/87, which refers to them as being part of 'those products defined in paragraph 1', paragraph 1 covering 'plain paper photocopiers incorporating an optical element'.

[3] The segmentations used for this review are the generally accepted Dataquest segmentations in force in July 1992, as follows :
- personal copier : up to 12 copies per minute, minimally featured,
- segment 1 : up to 20 copies per minute, with features such as reduction/enlargement, zoom,
- segment 2 : from 21 to 30 copies per minute,
- segment 3 : from 31 to 44 copies per minute,
- segment 4 : from 45 to 69 copies per minute,
- segment 5 : from 70 to 90 copies per minute,
- segment 6 : 91 and more copies per minute.

Conducting two separate proceedings on the same product originating from the same country would be illogical, contrary to the system envisaged by Regulation (EEC) No 2423/88, and conducive to incongruous results. In the case of PPCs from Japan, the review of the existing measures pursuant to Article 15 was opened and conducted in accordance with Article 14 as well, based on the view that Article 15 should, and indeed can only, be read in conjunction with Article 14. Reviews of existing measures under these provisions may lead to the amendment of those measures. If, following a review, existing measures could not be amended to include within the scope of those measures new types of the same product, the effectiveness of those measures would be impaired.

Several exporters also commented that the Commission had not re-consulted the Advisory Committee during the time between Cecom's supplement to its review request and the initiation of the review. However, the proceeding on imports of PPC's from Japan covers all types of PPC's, irrespective of their copy speed, and the Advisory Committee was duly consulted on the basic Commission proposal to initiate an Article 15 review in respect of this proceeding. The precise parameters of the investigation were not, at that time, a matter of discussion, but were clearly indicated in the notice of initiation, and the inclusion of PPCs over 75 copies per minute was subsequently discussed in the Advisory Committee on several occasions before any conclusions on the scope of possible measures were drawn. Private parties have their own extensive procedural rights, and all comments made by them in the course of the investigation on the types of product covered by the investigation and by possible measures were carefully considered before any conclusions were drawn.

3. Like product

(16) With respect to the question whether the PPCs sold by the Japanese producers and exporters concerned on the Japanese market and in the Community constitute a like product with the PPCs sold in the Community by the Community industry, it was established in the course of the review investigation that the basic technical characteristics (as described in recitals 11 and 12) of all PPCs investigated were identical or closely resembled one another within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88. Furthermore, in terms of their application, at least — but not necessarily alone — PPCs in adjoining segments compete with each other for the same users and should be considered like products.

(17) Japanese segment 5 PPCs, which were not produced by the Community industry during the investigation period, were, on the above analysis, considered to be like products to the segment 4 and segment 6 models which the Community industry did produce. One exporter in particular argued that there was no competition between Japanese segment 5 PPCs and the segment 4 and segment 6 PPCs produced by the Community industry, based notably on alleged differences in copy speed, copy volume and usage. However, it was found in the course of the investigation that the actual monthly copy volumes of segment 4 PPCs of the Community industry were frequently similar to those of Japanese segment 5 PPCs. Also, the copy speed of the latter was often not much higher in complex applications such as duplex copying than that of the segment 4 PPCs of the Community industry. As for usage, no fundamental difference was observed between segment 4 models of the Community industry and Japanese segment 5 models. With respect to the Community industry's segment 6 PPCs, it may be true that those PPCs are more economical than Japanese segment 5 PPCs when used in central reproduction departments with high copy volumes. But no convincing evidence was supplied that Japanese segment 5 PPCs cannot also be used, even though perhaps less efficiently, for processing of high copy volumes, whether centralized in a reproduction department or decentralized in office corridors. Certainly for customers with a copy volume in between high and very high, there is thus a real choice between a segment 5 and a segment 6 PPC. Furthermore, evidence was submitted by another Japanese exporters that in fact fierce competition existed, especially in the context of large bids and tenders, between a 'centralized' hardware package, including segment 6 PPCs, offered by the Community industry to fulfil the client's copying needs and a 'de-package', including segment 5 and segment 4 PPCs, offered by Japanese companies to fulfil exactly the same copying needs. In this sense, competition between PPCs even extends beyond adjoining segments. On the whole, therefore, the

strong growth in sales of segment 5 PPCs has been at least partly at the expense of sales of segment 4 and segment 6 PPCs, in the sense that in the absence of segment 5 models, customers with the need for such a significant copy volume could not normally have foregone buying a PPC and would have had to buy either a segment 4 or a segment 6 model.

As for Japanese segment 6 PPCs, one Japanese company had already started exporting a segment 6 model from Japan to the Community and had commenced marketing it here during the investigation period of the review. These imports competed, on the above analysis, with the Community industry's PPCs in segments 6 and 4.

(18) Japanese personal copiers, the smallest PPCs on the market, which were not produced by the Community industry in the investigation period, should be considered a like product to the segment 1 PPCs produced by the Community industry. These two segments overlap in terms of copy speed, the remaining difference between them merely being that segment 1 PPCs tend to have more features, for example the possibility for reduction and enlargement, and sometimes a larger copy volume capacity. When technical differences are so small, customer choice depends heavily on pricing.

C. COMMUNITY INDUSTRY

1. Introduction

(19) The question whether a Community industry existed and, if so, which producers were part thereof, was important in this review for two reasons: Procedurally, interested parties requesting a review under Article 15 of Regulation (EEC) No 2423/88 must, pursuant to paragraph 3 of that Article, show that the expiry of the measures would lead again to injury or threat of injury to a Community industry. Substantively, the likelihood of recurrence of injury of threat thereof must, in the review investigation, be assessed in relation to the Community industry, as defined in Article 4 (5) of Regulation (EEC) No 2423/88. Some exporters and importers questioned whether the complainant requesting the review represented Community producers whose collective output of PPCs constituted a major proportion of the total Community production of PPCs, within the meaning of Article 4 (5), and whether therefore the injury assessment should be limited to those producers.

2. The Community industry in the original investigation

(20) When the proceeding on PPCs was launched in August 1985, the Community industry consisted of 5 producers: Develop Dr Eisbein GmbH, Germany, Océ Nederland BV, the Netherlands, Ing. C. Olivetti & C. SpA, Italy, Rank Xerox Ltd, United Kingdom and the Netherlands, and Tetras SA, France. Together they constituted Cecom.

In May 1986, a majority of the shares in Develop was acquired by one of the Japanese exporters, and Develop was excluded from the Community industry for the purpose of the injury determination of the original investigation. Japanese subsidiary companies producing photocopiers in the Community were also excluded [1]. In November 1986, another Japanese exporter took a majority share in Tetras, which did not prevent Tetras from remaining part of the Community industry [2]. Since then, however, Tetras has stopped producing or selling PPCs.

The decision in the original investigation to accept Rank Xerox, Océ and Olivetti as part of the Community industry was reached notwithstanding the fact that all three of them imported part of their range of PPC models from Japan. In addition, Rank Xerox had a 50 % share holding in one of the Japanese exporters, and had a relatively low percentage of EC added value for its production of small PPCs in the United Kingdom. The Council's conclusions on Community industry in the original investigation, both in respect of retaining the complaining companies as part of the Community industry and of excluding Japanese subsidiaries producing in the Community from the Community industry, were upheld by the European Court of Justice [3]. In doing so, the Court emphasized that the Community authorities exercise a margin of appreciation in this respect, on a case-by-case basis, by reference to all the relevant facts.

[1] Recital 62 of Regulation (EEC) No 2640/86, see recital (1), footnote [4] of this Regulation.
[2] Recital 68 of Regulation (EEC) No 535/87, see recital (1), footnote [5] of this Regulation.
[3] See for instance Case C-156/87, *Gestetner Holdings PLC* v. *Council and Commission*, [1990] ECR I, p. 781, paragraphs 41 to 61.

3. The Community industry in the review investigation

(21) The request for the review was submitted on behalf of the three remaining members of Cecom, Rank Xerox, Océ and Olivetti.

Olivetti's position as a member of Cecom was clarified by a letter from OCI of 15 October 1992, in which it was confirmed that OCI, by a decision of its Board of Directors of 22 June 1992, delegated to Olivetti the right to represent OCI for the purpose of this anti-dumping proceeding. OCI produces PPCs in segment 1, which are sold through the Olivetti and Canan sales channels. The Community added value of these PPCs is sufficient to ensure Community origin.

(22) Rank Xerox's claim to be part of the Community industry has strengthened since the original investigation. It neither imported nor sold PPCs from Japan in the Community during the investigation period of the review. It significantly increased the percentage of Community added value for its production of small PPCs in the United Kingdom. Its company-wide Community added value, including production of high-speed PPCs in France, was also substantially higher than in the original investigation, at such a level that its Community origin is beyond any doubt. Rank Xerox is therefore still to be regarded as part of the Community industry.

The review investigation showed that OCI, rather than Olivetti, should be considered as a 'producer' of PPCs within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88. OCI is an independent legal entity in charge of the actual manufacturing of PPCs. Olivetti is a major, but not dominant, shareholder in this company. It is one of OCI's two sales outlets, and is its legal representative for the purpose of the review. But Olivetti does not itself 'produce' PPCs.

(23) Following the original investigation, Océ has maintained a significant level of production in the higher speed segments, with a very high Community added value, guaranteeing Community origin. But it did not succeed in extending its own-manufactured product range into the lower speed segments, where it continues to be supplied on the basis of an OEM (original equipment manufacturing) arrangement with a Japanese company. These OEM PPCs represent a minor, although not insignificant, part of Océ's PPC turnover in the Community. However, it was observed during the review investigation that it is now quite common for producers, including producers in Japan, to buy part of the extensive model range required by consumers from other producers. In addition, during the investigation period of the review the great majority of Océ's PPCs was no longer supplied from Japan, but from a third country not subject to the review (the correct origin of which was confirmed). Thus, the number of PPCs which Océ imports from Japan has sharply decreased since the original investigation. Océ could, therefore, as in the original investigation, be regarded as part of the Community industry.

It was considered that there was no need to exclude OCI from the Community industry. It is true that 50 % of the shares minus one in OCI are owned by Canon, one of the companies exporting the PPCs from Japan that were investigated in the review. But there was no reason to believe that OCI, which is jointly controlled by Canon and Olivetti, which claimed the protection offered by Regulation (EEC) No 2423/88 against imports of PPCs from Japan, which did not import any PPCs from Japan, and which granted full cooperation to the review investigation , behaved in a way that was different from that of Rank Xerox or Océ, or in any way that would be liable to render the findings of the investigation incorrect or unreliable.

(24) In 1987, Olivetti shifted its entire PPC production to a newly-created joint venture with Canon, Olivetti-Canon Industriale (OCI), established at the old Olivetti premises in Ivrea, Italy. In this joint venture Olivetti holds half of the shares plus one.

It was, however, necessary to limit the injury determination for OCI to the production for and sales made through the Olivetti sales channel. This was because Canon did not provide the information necessary to permit the Commission to investigate OCI's sales through the Canon sales channel, and because sales information from Canon, one of the exporters of PPCs from Japan, could in any case not be taken into account in this review for the purpose of determining injury to the Community industry. As for Olivetti, although the majority of the PPCs it sold in the Community in the investigation period were sourced from Canon, in accordance with the normal commercial strategy of offering a complete range of models, these PPCs did

not originate in Japan. In any case, sales transactions between OCI and Olivetti were ignored as being transfers between related parties and data on cost of production and sales of OCI-produced PPCs by Olivetti to unrelated customers were established through verifications.

(25) Following the introduction of definitive anti-dumping duties on imports of PPCs from Japan in 1987, almost all Japanese exporters established or expanded production facilities in the Community (in France, the United Kingdom and Germany). As opposed to OCI, all of these production facilities in the Community are 100 % or majority owned by exporters of PPCs from Japan, and none of them joined the review request. It was considered that, as the review concerned imports from Japan, these production facilities, the commercial behaviour of which was determined by the parent companies in Japan under investigation and which did not support the review request, had to be excluded from the Community industry, as their behaviour was shown to be different from that of producers in the Community that were not related to Japanese exporters.

4. Conclusion on the Community industry

(26) In conclusion, for the purpose of this review, the Community industry consisted of Océ, OCI and Rank Xerox. The output of these Community producers, limited for OCI to the portion produced for and sold through Olivetti, represented the near totality of Community production of the like product, given that the production facilities majority-owned by Japanese exporters had, for the purpose of this review, to be excluded from Community industry. This exclusion entailed that their PPC production in the Community, whether or not having sufficient Community added value to be of Community origin, did not qualify as Community production, nor did they qualify as Community producers, within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88, for the purpose of this review. Community production was the production of the Community industry and of other producers in the Community that were not excluded, but that chose not to support the review. The only other possible Community producer in this review was Kodak, with a factory in Germany. Although Kodak supplied information in response to the Commission's questionnaire, it did not participate in the investigation as part of the Community industry, and it is uncertain whether its limited PPC operations in the Community would qualify as production. The volume of PPCs involved was, in any case, quite small.

D. THE PRESENT SITUATION IN THE COMMUNITY MARKET

1. Introduction

(27) In order to establish whether the expiry of the measures in force would lead again to dumping and injury or threat of injury, it was first necessary to examine the present economic situation of the Community industry. This analysis consists of three parts. The first part briefly recollects the economic situation of the Community industry at the time of the original investigation. In a second part, developments in that situation between 1988 and the end of the investigation period are analysed in detail. Finally, those recent developments are compared with the situation at the time of the original investigation and a conclusion is drawn on the state of the present economic situation of the Community industry.

2. Situation of the Community industry at the time of the original investigation

(28) In the original investigation period (1 January to 31 July 1985), the Community market share of the Community industry for its own-manufactured PPCs had dropped from 21 % in 1981 to 11,2 %. Price undercutting in the form of the sale of more highy-featured models imported from Japan at prices comparable to or below those of lesser-featured Community industry models was found.

Price depression was taking place. The PPC hardware profitability of the Community industry had decreased from 8 % net profit before tax in 1983 to 4 % in the investigation period, while the target profit for the Community industry had been determined at 12 %. Taking these elements into account, the Council considered that material injury to the Community industry existed.

3. Current situation of the Community industry

Introduction

(29) The indicators for the Community industry analysed below relate to the period from 1988 to the end of the investigation period of the review (1 July 1991 to 30 June 1992). They pertain to the own-manufactured PPCs of the Community industry. Refurbishing (the re-working of existing models taken back from the field with a view to placing them again on the market) was included in the data. Data for OCI were limited to production for and sales via Olivetti.

Production, production capacity, utilization of capacity, stocks

(30) Production of the Community industry decreased by 16 % from 226 480 units in 1988 to 190 375 units in the investigation period. Over the same period, the production capacity of the Community industry decreased by 29 %. As a result of this, capacity utilization improved 13 % to a level of 81 % in the investigation period, based on one work shift of eight hours. Stocks increased by 7 %.

Employment, investments, R&D expenses

(31) The number of manufacturing personnel employed by the Community industry increased by 13 %, reflecting a gradual shift to the manufacturing of larger and more complex PPCs and environmental concerns resulting in an increasing level of activity in refurbishing existing models, a procedure which is relatively labour-intensive, The overall level of employment increased by 4 %, to a total of 16 549 people in the investigation period. Over the same period, R&D expenses increased from 5,3 % of turnover to 5,4 % of turnover.

Sales volume and market share

(32) The number of placements made by the Community industry decreased 1 % from 141 477 units to 140 186 units, in a Community market which expanded by 24 %. The market share of the Community industry consequently decreased by a fifth, from 15,4 to 12,4 %, measured in units. Weighting the number of units placed on the market by their copy volume, which takes account of differences between small and large PPCs, the market share of the Community industry was still 29 % in the investigation period, but down by a sixth from 34,4 % in 1988. Particularly notable was the decrease in the Community market share of the Community industry for medium-large PPCs, in which it used to have a strong market position and which formed a major source of profits. In segment 4, for instance, the market share of the Community industry decreased from 64,4 % in 1988 to 42,1 % in the investigation period, a dramatic drop of a third.

Price development

(33) The measurement of PPC price developments in the Community over time is to some extent necessarily speculative, due to the lack of information on actual sales prices (as opposed to list prices) for the years prior to the investigation period, the rapid succession of PPC models, with changes in features, and the need to take account of developments in production costs, inflation and exchange rates. What can be observed, however, is that between 1988 and the investigation period, there were a number of instances where Japanese companies introduced new models with more features, or more advanced features, at list prices below those of the old models. In other cases, list prices were kept stable for several years, despite inflation and appreciation of the yen. As for the Community industry, one company registered decreases in its list prices of between 21 and 29 % for the period between 1988 and the investigation period, and another decreases in revenues for cost per copy contracts of 24 %, as adjusted for inflation. The third Community producer showed a mixture of list price decreases and increases, with the decreases centred more on lower segment models. All in all, therefore, there appears to have been a downward price spiral, in which most if not all companies participated, leading to price despression.

Profitability

(34) This price depression is reflected in the development of the profitability of the Community industry. While Community industry's turnover of own-manufactured PPCs increased by 3 % from 1988 to the investigation period, its return on those sales decreased by 76 %, from a weighted average level of 11,1 % in 1988 to 2,7 % in the investigation period. The profitability of the entire photocopier business of the Community industry, including service, consumables, spare parts, and financing, decreased by 42 % from a weighted average level of 11,1 % in 1988 to a level of 6,4 % in the investigation period. These figures demonstrate that, starting from the same level of profitability in 1988, sales of own-manufactured PPC hardware have become much less profitable than the accompanying sales of maintenance contracts, financing contracts, paper, toner, etc. This suggests that price competition on sales of PPC hardware has become especially fierce.

Some exporters argued that the profitability of the Community industry should be evaluated on the basis of their overall photocopier business, and not just on sales of PPCs. Several observations should be made in this respect. First, the other elements involved in the overall photocopier business, such as the servicing, consumables, spare parts and financing elements mentioned above, are not the subject of this investigation. Secondly, the profit figures used for normal value are based on sales of PPCs only, and might have been higher, leading to a finding of more dumping, had they been based on the overall photocopier business. Indeed, in the original investigation, several exporters insisted that the Commission should base profitability for normal value on sales of PPC hardware only. The Commission then adopted this approach at their request, and, with a view to consistency, applied it also for the injury determination. The same approach was duly maintained in the review investigation. Finally, if the Community industry were not allowed to expect a reasonable return on the investment it has made to produce PPCs, it would have no incentive to continue manufacturing. Instead, the Community producers would probably become OEM distributors, merely selling and servicing PPCs produced by Japanese companies. It was therefore considered that a reasonable return should be available on the manufacture and sale of PPCs as such.

Some exporters and improters also argued that the profitability of the Community industry had improved after the end of the investigation period to such an extent that the Community industry was no longer in a precarious situation. Events after the end of the investigation period are not normally taken into account, as the investigation would otherwise never end. However, given the unusual length of the investigation, this particular claim was, exceptionally, checked. It was found that while the overall profitability of the Community industry had improved somewhat, in line with the general improvement in the economy in the Community, profitability on sales of PPCs continued to lag far behind. The findings for the investigation period therefore still provided a reliable basis for the conclusion drawn below.

4. Conclusion on the current situation of the Community industry

(35) Several key indicators of the economic performance of the Community industry deteriorated significantly from 1988 to the end of the investigation period, such as production (down 16 %), market share (down from 15,4 to 12,4 %), and PPC hardware profitability (down from 11,1 to 2,7 %).

Comparing the injury data of the original investigation period with those of the review investigation period, it was observed, first, that the size of the Community market expanded over this period by 75 % from 53 913 units placed per month (in 10 Member States) to 94 286 units placed per month (in 12 Member States). In comparison with this market expansion, the sales in the Community of Community industry's ownmanufactured PPCs increased by 94 %, from 6 016 units per month to 11 682 units per month. The market share in the Community of the Community industry for its ownmanufactured PPCs consequently increased from 11,2 to 12,4 %, measured in units. However, this gain in market share was won at the expense of a reduction in profits, down from 4 % net profit before tax on PPC hardware in the original investigation period to 2,7 % in the review investigation period.

In this capital-intensive industry which is currently developing major new successor products to PPCs such as digital copiers and multi-purpose office machines, both reasonable profits and significant market shares are important to ensure that the necessary investments in R&D and production facilities can be made in order to remain viable in the medium term. Comparing the original investigation period, when the Council determined that material injury existed, with the investigation period of the review, it could not, on the whole, be said that the Community industry had come to be in a better position.

E. THE BEHAVIOUR OF THE EXPORTERS CONCERNED

1. Introduction

(36) It was also necessary to examine the behaviour of the exporters concerned. In this respect, one exporter argued that for the purpose of determining whether the expiry of the measures in force would lead again to dumping and injury or threat of injury, its allegedly small and not well-known exports should not be cumulated with those of the other exporters. It must be observed, however, that, in principle, anti-dumping proceedings apply to imports from countries and not to individual exporters. Also, the impact of the dumped imports from the exporters concerned on the Community industry should be assessed globally, as every sale lost by Community industry to dumped imports hurts Community industry equally, whether it was lost to a small exporter or a large one. This particular exporter, whose sales to Community customers in any case represent as much as around 10 % of total Community sales of Japanese-origin PPCs, would thus be unfairly favoured if it were treated differently from the other Japanese exporters.

2. Volume of imports from Japan

(37) The situation was found to be as follows:

In absolute terms

Between 1988 and the investigation period, the volume of imports from Japan decreased 16 %, from 351 970 units to 294 195 units per year.

Relative to consumption

During the same period, the total number of placements of PPCs in the Community per year is estimated to have increased by 24 % from 919 580 units to 1 137 910 units. The market share of imports from Japan thus decreased from 38,3 % in 1988 to 25,9 % in the investigation period.

Relative to total production in the Community

Between 1988 and the investigation period, total production in the Community increased 30 % from 640 263 units to 834 094 units per year, including Japanese production facilities in the Community. Imports from Japan thus represented 55 % of total production in the Community in 1988, and 35,3 % in the investigation period.

Relative to the production of the Community industry

The production of the Community industry decreased by 16 % from 226 480 units in 1988 to 190 375 units in the investigation period. Imports from Japan thus represented 155,4 % of production of the Community industry in 1988, and 154,5 % in the investigation period.

Conclusion on volume of imports

(38) The introduction of the definitive anti-dumping duty in February 1987 was followed by a substantial decrease in the volume of imports from Japan. This trend has become even stronger recently, in line with the appreciation of the yen. At the same time, Japanese exporters have significantly increased production in the Community, up by 56 % from 413 783 units in 1988 to 643 719 units per year in the investigation period. They have also increased imports into the Community from factories established in third countries, up by 37,7 % from 106 012 units in 1988 to 145 978 units per year in the investigation period.

Nevertheless, the volume of imports from Japan during the investigation period still amounted to almost 300 000 units per year, representing 26 % of the Community market, measured in units, and more than one and a half times the production volume in units of the Community industry. It also appeared that over time a larger part of the imports from Japan has come to consist of medium-large to large PPCs, putting extra pressure on the traditionally strong market position of the Community industry for such PPCs. On the whole, therefore, imports from Japan in the investigation period were still capable of having a very significant effect on Community industry, depending in particular on the price level at which they were sold.

3. Prices of imports from Japan

Methodology to examine price undercutting

(39) The extent to which the weighted average sales prices of imports from Japan in the investigation period in the Community market undercut the weighted average sales prices of the Community industry during the investigation period was examined for the German, Franch, Italian and United Kingdom markets, which were considered representative for the Community market as a whole, as they represented the large majority of sales on the Community market, both by the Community industry and imported from Japan.

As opposed to Japanese subsidiaries in the Community, who placed PPCs mainly with dealers for outright sale, the Community industry placed PPCs mainly with end-users, on leases, cost-per-copy contracts and rentals. To permit a fair price comparison, the Commission used only the outright sales and leases of the Community industry. To 'unbundle' the latter type of contracts into a hardware element to be used for the price comparison, setting aside the financial element, companies' normal internal accounting rules, based on generally accepted accounting practices, were used. The weighted average PPC hardware price thus calculated for each model was then compared with the corresponding weighted average Japanese outright sales prices. Pure rentals, i.e. contracts that do not qualify as sales under normal accounting rules, were excluded from the comparison. So were cost-per-copy contracts, wheter or not qualifying as sales-type contracts, because of the difficulty of objectively 'unbundling' them. As for the calculation of sales prices, these were net of directly linked discounts and rebates. In this respect, trade-in discounts were not regarded as a discount on the sale of the new machine, in the same way as for the dumping calculation.

Only newly-manufactured models were compared, as the use of re-furbished or remanufactured models on one side of the equation might have distorted the price comparisons. Given the technical complexity of comparing the models of the Community industry with those of Japanese exporters, price undercutting was examined on the basis of a representative sample of seven own-manufactured models of the Community industry, out of a total of 30. These models were selected to represent a broad range of PPC models, covering those product segments where the Community industry sold almost all of its own-manufactured models, i.e segments 1 to 4. Together these models amounted to around 30 % of the Community industry's PPC turnover in the Community in the investigation period, with each of them having a significant volume of sales. The total number of units sold of the seven Community industry models in the four Member States concerned was around 15 000, and the distribution between outright sales and leases roughly 50/50. For each of these representative Community industry models a comparable imported model of each Japanese exporter was selected whenever available. Almost all of these models were also sold in substantial quantities. As for the few imported models that were sold only in small quantities, their prices were not observed to be significantly out of line with other, more frequently sold models. In any case, when calculating the weighted average undercutting margin for each exporter, small quantities carried little weight.

Two product segments not covered in the undercutting exercise were personal copiers, the smallest PPCs, and segment 6, the largest PPCs. Personal copiers competed with the segment 1 PPCs of the Community industry, just as Japanese segment 5 PPCs competed with the Community industry segment 6 models. However, in order to arrive at the most reliable price comparisons, with the smallest adjustments for differences in technical characteristics, Japanese segment 1 models were compared with the Community industry segment 1 models, and Japanese segment 5 models were compared with the Community industry segment 4 models. This does not mean that Japanese personal copiers were not undercutting the Community industry's segment models or that Japanese segment 5 models were not undercutting the Community industry's segment 6 models, as properly adjusted for differences in technical

characteristics. It merely means that it was not considered necessary to include such comparisons in the undercutting exercise, as price comparisons based on more similar product segments, covering by far the largest part of Community production, were available.

(40) Where necessary, appropriate adjustments were made both for differences in technical characteristics and for differences in trade levels.

Regarding adjustments for technical differences, the number of criteria used was substantial and differed according to product segment. The adjustments were determined by the Commission on the basis of input from both the Community industry and exporters. In general, adjustments were made for the presence or absence of features, not for any alleged differences in quality for the same features. Such differences were considered too subjective and difficult to estimate to permit reliable quantification. The value of features was, in principle, calculated as the ratio between the list price of the feature concerned and the list price of the basic model without that feature, as determined for a number of other models in the same product segment. The value of minor features was sometimes estimated as a percentage of the value of more important comparable features. The value of options, which often had to be added to Japanese models to make them comparable to the models of the Community industry, was calculated as the ratio of their list price to that of the basic Japanese mdoel. The resulting percentage was then added to the actual sales price of the basic model, based on the assumption that the percentage discount on the list price of the option was similar to the percentage discount on the basic model.

Following claims by exporters, the Commission examined whether an adjustment should be made for the generally higher weight of the Community industry models in comparison with Japanese models, especially in the higher copy speed range. In this respect, it was considered that greater weight in itself does not have any value in the eyes of consumers. If anything, the opposite was more likely to be true. More importantly, as a measure for greater productivity or durability, the weight criterion was found to be inaccurate, as the actual and target monthly copy volumes of the Japanese models used in the sample, and their actual and target operational life, were in fact not significantly different from those of the Community industry models in the sample, both in absolute terms and relative to copy speed. With respect to durability, it was also found that lease periods with customers were generally comparable in length, meaning that customers write off PPCs after the same length of time, whether it concerns a Japanese model or an Community industry model, Japanese models were also frequently sold second hand. Furthermore, the capacity of a model to be re-manufactured or re-furbished and then sold again does not affect its operational value in the eyes of the first-time user. No adjustment for weight or alleged differences in productivity/durability was therefore granted.

Some exporters also argued that an adjustment should be made for the allegedly higher quality and greater length of the warranty provided by Rank Xerox and Océ. It was found, however, that those warranties are provided only to customers that conclude a maintenance contract, and are financed from the proceeds thereof. The Community industry's warranties without maintenance contracts were comparable to those of the Japanese exporters.

(41) Regarding levels of trade, sales were compared at the same level of trade whenever such sales were made in sufficient quantities. In this respect, Olivetti sales to end-users and Océ sales to dealers had been made in insufficient quantities and were disregarded. Sales of certain models by Rank Xerox to dealers in certain Member States were also disregarded as being too small in volume. Almost all Japanese companies sold in sufficient quantities at dealer level but only some at end-user level. Where the Community industry end-user sales had to be compared with Japanese dealer sales, the former were brought to the dealer level. This adjustment was calculated based on the actual difference in

price between the two levels of Rank Xerox (for models sold in sufficient quantities), the sales structure of which was considered comparable to Océ for this purpose. Japanese sales at distributor level were also adjusted to bring them to dealer level, based on price differences of Japanese companies between these two levels. All brand sales were thus compared at dealer level, or at end-user level if sufficient volumes had been sold by both sides.

As for Japanese sales to OEM importers, these were compared as adjusted to cif Community frontier level, customs and anti-dumping duties and customs clearance charges added, with prices of the Community industry adjusted from end-user or dealer level to ex-level. For this latter purpose, the percentage reduction in cost for selling ex factory, based on the Community industry's own cost structure, was deducted from their actual sales prices.

Results

(42) On this basis, weighted average undercutting margin per exporter, for all of its imported models in the sample together, ranged from 7 to 36 %. The weighted average degree of undercutting of all exporters together was 26 %. The weighted average degree of undercutting for segments 4 and 5 was twice that for segments 1 to 3 (38 % compared to 19 %). The weighted average degree of undercutting was higher in Germany and the United Kingdom than in France and Italy, but it was high in the latter two Member States as well. These figures show that, despite the existence of the anti-dumping measures in force, Japanese exporters were still selling their PPCs on the Community market at prices significantly below those of the Community industry.

Underselling

(43) The same methodology as described above for undercutting was used to examine the price increase necessary at the net, free-at-Community frontier, before duty level to raise the actual sales prices of the imported models in the sample to a level at which the Community industry would be able to sell at a profit permitting a reasonable return on investment. The weighted average actual sales prices of each exporter as calculated in the examination of undercutting were set against the target prices of the models of the Community industry. The absolute amounts by which they fell short of those target prices were then transformed, on a weighted average basis for each exporter, into the underselling margin at the net, free-at-Community frontier, before duty level. For this purpose, in order to bring sales by related importers to first independent buyers in the Community back to the net, free-at-Community frontier, before duty level, the existing anti-dumping and customs duties were deducted. For PPCs over 75 copies per minute, no anti-dumping duty was in force and no such deduction was made. On this basis, the weighted average underselling margin for each exporter ranged from 44 to 141 %. The weighted average degree of underselling of all exporters together at this level was 113 %.

(44) The target profit margin for the Community industry used in this examination was calculated before tax as a percentage of actual turnover in the investigation period sufficient to deliver a return on equity before tax of 18 %, which was considered reasonable for publicly-quoted companies with a respectable financial status in this business sector. This 18 % consisted of a market interest rate of 8 % during the investigation period of the review, a premium of 4 % required to compensate shareholders for the risks incurred in investing, and an average tax rate applicable to the Community industry of 35 %. The turnover and assets used for this calculation covered the entire copier business of the Community industry, as it was not possible to reliably identify separately the assets used for PPC hardware sales. It was considered, in any case, that the return on equity for the PPC hardware part of the copier business should not be lower than for the other parts. The Community industry's sales outside the Community, but produced in the Community, were included in the turnover used. The resulting target return on sales was 9,4 % on a weighted average basis for the Community industry as a whole.

(45) Given that the weighted average actual profit before tax of the Community industry on PPC hardware was 2,7 % in the investigation period, sales prices of the Community industry models in the sample were increased by an extra 6,7 % profit on turnover. This method, which is based on the weighted average actual profit of all Community industry own-manufactured models together rather than the actual profit or loss achieved on just the models in the sample, takes account of the higher profit rates achieved by the Community industry on segment 6 models, which were not included in the comparison table. For this reason, this method was preferred over the more common method of adding a 9,4 % profit margin on turnover to the cost of production of each model in the comparison table.

4. Conclusion

(46) Following the introduction of the original anti-dumping measures, PPC imports from Japan showed a significant fall in volume. The remaining volume of these imports was, however, still quite significant. The imports from Japan also showed a shift toward larger PPCs. The degree of undercutting found in the Community market for Japanese imports was high all around, and especially high for the larger PPCs. Given this strong price pressure exerted by substantial import volumes from Japan, it was considered necessary to examine whether dumping was occurring which contributed to the situation of the Community industry described above and whether the expiry of the anti-dumping measures in force would lead to a recurrence of dumping and injury.

F. RECURRENCE OF DUMPING

1. General

(47) Dumping calculations, both for normal value and export price, were based on verified outright sales of PPCs only. Leases, rentals and cost-per-copy contracts were excluded in order to facilitate the calculations and render them more reliable. Since these types of contracts represented only a small percentage of total transactions for the Japanese companies, both in the Community and Japan, it was assumed that the results would not be significantly affected.

(48) Dumping margins were initially established separately for brand sales and OEM sales and combined to a single weighted average dumping margin for each exporter only in the last stage of the calculation. OEM sales, whether on the domestic market or for export to the Community, could generally be distinguished from brand sales by several factors: significantly lower sales, advertising, service and other costs were incurred for OEM sales than for brand sales; the OEM PPCs were re-sold to final customers under a brand name not owned by the exporter; and the relationship between the producer and the OEM purchaser was at arm's length.

(49) The OEM importer Afga Gevaert requested to have its own dumping margin and duty, arguing that there was less dumping on its imports from Japan, that it had not contributed to the dumping, and that it deserved special treatment because of the allegedly large contribution it made to the design and development of the PPCs it purchased in Japan. It was established in the investigation that the imports of Agfa Gevaert were dumped, albeit less so than the brand sales of its Japanese suppliers. As for the contribution of Agfa Gevaert to the PPCs it purchased from Japan, the value added was limited and focused on the outside appearance of the PPC and the lay-out and software of its control panel, rather than on the functioning of the PPC inside. It was clear, therefore, that Agfa Gevaert could not be considered the producer of its Japanese-sourced PPCs, but that it was an OEM importer. It is not possible under the legal framework established by Regulation (EEC) No 2423/88 to impose separate duties on individual importers, whether OEM or brand-sale, as opposed to exporters. Separate duties for importers could easily lead to selective dumping by the exporters concerned. Article 2 of Regulation (EEC) No 2423/88 stipulates that an anti-dumping duty may be applied to any dumped 'product' whose release for free circulation in the Community causes injury, where a product shall be considered to have been dumped of its 'export price' to the Community is less than the normal value of the like product. For the calculation of this export price, the exports to all Community importers of all different types of the product concerned should be cumulated, in accordance with Article 2 (8) of Regulation (EEC) No 2423/88. Article 13 (2) of that Regulation confirms that regulations imposing anti-dumping duties

shall indicate the product covered, the country of origin or export and, if practicable, the name of the supplier. No provision is made for indicating the name of the importer.

(50) So-called trade-in discounts were considered as representing the value of the traded-in PPC or, when such PPCs were destroyed, the value of preventing a second-hand market from overtaking sales of newly produced PPCs. Not being considered true discounts, they were not deducted from the sales price of the new machine, either for normal value or for export price. Such expenses were considered part of selling, general and administrative (SGA) costs. The fact that these expenses could be linked by some exporters to the sale of new PPCs is not surprising, since the old PPC is only traded in when a new one is purchased. This does not, however, mean that the money paid by the supplier for the traded-in PPC is a discount on the sale of the new PPC. Also, the fact that some exporters treated these expenses as deductions from gross turnover in their accounting records is not determinative for the legal interpretation of the concept of a discount referred to in Article 2 (3) (a) of Regulation (EEC) No 2423/88. The same approach was followed in respect of the practice of paying off the remaining lease term of a PPC in the field in order to sell a new one, which is a scheme similar to a trade-in discount. The methodology was the same as that used in the original investigation, which has been accepted by the European Court of Justice [1].

(51) Ordinary financial expenses were taken into account as a cost both for normal value and for export prices. Offsetting financial revenue resulting from the normal operation of the business was accepted, up to the level where it completely cancelled out the financial expenses. The argument of some exporters that financial revenues should be allowed to further offset other SGA costs was not accepted, as an excess of financial income should not be allowed to eliminate SGA expenses that were actually incurred. Credit granted by suppliers was, in accordance with normal Commission practice, not regarded as an offsetting financial revenue, but as a potential cost not incurred, for which no allowance can be made. Extraordinary income and expenses were disregarded in all cases.

(52) In addition, in respect of both normal value and export price, the expenses and revenue involved in PPC service centres were included in certain cases in the calculation of SGA percentages applicable to sales of PPCs, namely when it was established in the course of verification that these centres provided certain benefits without charge to buyers of PPCs, for instance by giving technical training to dealers or providing free spare parts, the costs of which could not be identified separately. Since these centres were also involved in the conclusion and operation of maintenance contracts, the turnover produced thereby was, in those cases, also included.

2. Normal value

Links between legally separate companies

(53) Such links were the subject of discussion in two respects. First, the question arose as to whether two of the exporters did not, in reality, form a single economic entity. One of these two companies (company A) is majority-owned by the other (company B) and is included in the latter's consolidated accounts, even though it is a legal entity in its own right, listed separately on the stock exchange. Company A assembles, on the basis of a sub-contracting agreement, a large quantity of PPCs for company B. For this purpose, the latter supplies the results of its R&D, the technical designs, and a majority of the parts. Company B, which should be considered the producer of these PPCs, sells these and other PPCs both in Japan and for export to the Community. A joint selling company of companies A and B sells, in Japan, PPCs of company B's brand. However, company A also produces — partially different — PPCs for its own account, with some R&D of its own and with royalty payments to company B for the remainder. Company A sells these PPCs for export to the Community (but not in Japan), partly to OEM purchasers and partly under its own brand name, for which it has set up a distribution network of its own. In this respect, company A exercises the full functions of producer/exporter, and it is in this respect, therefore, that it should be considered a separate economic entity from company B, although it is clearly related. In the absence of

[1] See for instance Case C-174/87, Ricoh Company Ltd v. Council, [1992] ECR I, p. 1335, paragraphs 19, 20 and 21.

domestic sales of own-manufactured PPCs, whether brand sales or OEM sales, normal value for company A was constructed, based partly on costs verified at the premises of company A, company B and their joint selling company, and partly on the weighted average cost and profit of other producers.

(54) The above situation where two companies operate at the same horizontal level and exercises the same functions, even though one is majority-owned by and partly dependent on the other, should be distinguished from the situation where a division of production and sales activities is drawn within a group made up of legally distinct companies, with one company producing and the other company selling. Two companies operating such a vertical distribution of tasks, each incomplete in itself, do constitute a single economic entity, as confirmed by the European Court of Justice on many occasions. Thus, the Commission could not accept the claim made by certain exporters that the export prices and normal value used were not comparable within the meaning of Article 2 (3) of Regulation (EEC) No 2423/88. Both domestic and export prices were in fact compared ex warehouse of the producer, with domestic sales subsidiaries forming part of the economic entity 'producer', as they fulfilled tasks which are normally the responsibility of an internal sales department of the producer. Sales by such domestic subsidiaries have thus been properly compared with the sales made by the producer's export department for export to the Community. Appropriate allowances for differences affecting price comparability were subsequently made in accordance with Articles 2 (9) and 1 (10) of Regulation (EEC) No 2423/88.

Selective normal value

(55) Two exporters claimed that they operated a separate sales channel for sales to unrelated distributors, that these sales were at a different level of trade than their sales to other types of clients, and that this level of trade should be used to establish normal value for comparison with export prices, to the exclusion of their sales to other clients. The Commission investigated these claims. For both exporters it was found, based on a representative sample of models, that the prices of their individual transactions with the stated distributors overlapped to a considerable degree with the prices of individual transactions with other types of clients, whether dealers or end-users. With respect to quantities sold to the stated distributors, whether model-by-model or in total, there was also significant overlap with quantities sold to other types of clients, whether dealers or end-users. The claimed distributors of one exporter were, furthermore, found to sell partly to end-users, meaning that in this respect they were exercising the same functions as dealers. As for the other exporter, it reported its sales to the claimed distributors as taking place through the same sales channel as its sales to large end-users, implying a similar cost structure for both types of clients. Finally, for both exporters the total of sales to claimed unrelated distributors by volume was very small in relation to the volume of their domestic sales and less than 5 % of their export sales. Under these conditions, it was considered that the exporters had not demonstrated that the claimed sales channels of unrelated distributors were consistently distinguishable from sales to other types of clients in terms of costs, quantities, prices, and functions of buyer, and that the exporters had thus failed to prove why the claimed distributor channel should be used to the exclusion of other sales channels for the comparison with export prices.

There was, furthermore, no reason to exclude sales to end-users, as requested by one of the above exporters, as the prices of individual transactions with end-users, especially large ones, overlapped to a great extent with the prices of individual transactions with dealers.

Normal value for brand sales based on actual prices

(56) In the investigation period, all but one of the exporters visited had a volume of domestic PPC sales which exceeded 5 % of their export sales to the Community. Normal value for this one exporter was constructed. For the other exporters, it was considered that their domestic PPC sales, taken as a whole, were sufficiently representative to serve as the basis for the determination of normal value. For those exporters, transactions covering at least 70 % of domestic PPC turnover were the subject of verification. Some transactions that were, at the

request of exporters, not used for the calculations pertained to sales channels with a very small turnover or to sales made by very small related sales subsidiaries.

For these exporters, domestic PPC models that were comparable with models exported to the Community were identified, adjustments being made where necessary and feasible for differences in technical characteristics to the domestic models. For a number of export models, closely resembling domestic models were not found. Normal value for those models was constructed.

For each comparable domestic model, the volume of domestic sales was compared with the volume of export sales to the Community of the export model. Where domestic sales did not exceed 5 % of export sales in volume, those domestic sales were not considered representative for the model in question, and normal value for that model was constructed.

(57) For each remaining comparable model, the number of units sold domestically at a profit was calculated, by comparing the net invoice value — after deduction of directly related rebates and discounts — of each transaction with the cost of production, calculated in the manner indicated further below. Where profitable sales exceeded 80 % in volume of total domestic sales of the model concerned, normal value was calculated as the weighted average sales price of all transactions, including those at a loss. Where profitable sales represented between 20 and 80 % in volume of total domestic sales of the model concerned, normal value was calculated as the weighted average sales price of profitable transactions only. Where profitable sales represented less than 20 % in volume of total domestic sales of the model concerned, normal value for that model was constructed, as it was then considered not to have been sold in the ordinary course of trade, within the meaning of Article 2 (4) of Regulation (EEC) No 2423/88.

Constructed normal value for brand sales

(58) Where, in accordance with the above methodology, normal value had to be constructed, the cost of manufacturing of the export models was calculated. Amounts for depreciation of moulds were based on normal Japanese accounting and tax practices, resulting in full depreciation over two years. In some cases where statements of manufacturing costs submitted by exporters were found to be significantly out of line with audited figures for cost of goods sold and stocks, corrections were made.

(59) The reasonable amount for SGA expenses to be added to arrive at the full cost of production was, for all producers, based on their own cost structure, including sales subsidiaries, in accordance with the single economic entity concept. This includes the one producer which did not sell PPCs of its own brand domestically, as in that case the SGA costs were taken to be those which it incurred in selling, through its joint domestic sales subsidiary with another producer, PPCs of that other producer's brand. The same approach had been followed in the original investigation. This producer argued that if it had sold its own brand PPCs domestically, it would have sold them in small quantities only and in a more direct manner with fewer costs. However, this producer did have a domestic sales structure and there was no reason to assume, without any evidence, that it would not have sold its own brand PPCs through that structure. Furthermore, since the SGA was calculated as a percentage of turnover, the argument that a smaller quantity of sales, even through a different, simpler type of sales channel, would necessarily have led to a lower cost allocation, is flawed. Finally, the argument that this producer's own brand would be less well known is already taken into account by the fact that its domestic sales structure, on which SGA costs were based, incurred few advertising expenses for the PPCs of the other producer's brand. SGA expenses were calculated specifically for PPCs, and separately for each sales channel, whenever the available accounting informating permitted this.

R&D expenses were normally based on those allocated, under internal company accounting rules, to the copier division as a whole (including digital and full colour copiers). Where a separate identification of the copier division was not possible, or where the company's allocation of R&D costs to the copier division did not take account of basic R&D that is not product-specific, the R&D costs for the company as a whole were taken, calculated as a percentage of the company's total cost of manufacturing for all products. The argument that R&D costs should be limited to those strictly incurred for PPCs was rejected: R&D expenses are general expenses, which have to be borne by the company on a current accounting basis and which must therefore be entered in the accounts for the financial year in which they are incurred on the turnover of similar products or, in the case of R&D that is not product-specific, on all products. Royalty income was allowed to offset R&D expenses.

(60) In cases where exporters had a sufficient volume of profitable sales, the reasonable profit margin was the weighted average profit of their own sales, i. e. all sales if more than 80 % in volume was sold at a profit and profitable sales only if between 20 and 80 % in volume was sold at a profit. In other cases, the weighted average profit margin of all other producers with a sufficient volume of profitable sales was applied. Although some exporters criticized this approach as leading to high profit margins, this approach results directly from the ordinary course of trade test described in recital 57. Its correctness is confirmed by Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, which states clearly that the profit used in constructed normal value should be based on profitable sales.

Normal value for OEM sales

(61) The general methodology applied to establish normal value for OEM sales was identical to that outlined above for brand sales. In contrast to the situation at the time of the original investigation, several producers now made OEM sales in the domestic market. Where such sales represented more than 5 % in volume of OEM export sales to the Community, both overall and for each comparable model, normal value for OEM sales was established on the basis of prices actually paid, whenever such sales were made at a profit in sufficient volumes. In other cases, the OEM normal value was constructed, based on the producer's own cost and profit structure when possible, and on those of the OEM sales of other producers when necessary. In this latter case, given the availability of usable cost and profit data of other producers for domestic OEM sales of PPCs, the request of one exporter to use costs and profit incurred in its OEM sales of other products in the same business sector could not be granted, taking account of the provisions laid down in Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88.

(62) When normal values had to be constructed on the basis of the SGA expenses of other companies, R&D expenses were considered as part of the cost of manufacturing, so that each company's own R&D figures were used, together with the weighted average SGA expenses (excluding R&D) of other companies. This approach was considered to be more reliable than using other companies' R&D figures.

3. **Export price**

General

(63) Export prices were verified for arount 70 % of each exporter's total export sales to the Community. All sales to OEM importers were verified, either at the premises of the exporters or of their subsidiaries in the Community concerned with OEM sales. As for brand sales, which were sold almost exclusively via subsidiaries established in most of the Member States of the Community, it was deemed necessary to verify only a representative portion, based on the largest Member States. A correcting weighting factor was accordingly used in the final dumping calculation to re-establish the original ratio between brand sales and OEM sales.

(64) Where models were sold in several different configurations, standard configurations were agreed with exporters, which were normally the most basic version of the model concerned. This standard configuration was then compared with domestic models, and, where necessary and feasible, appropriate adjustments were made to the normal value of the comparable domestic model.

Status of importers

(65) Three importers which had claimed to be unrelated to an exporter were found in fact to be related.

The first case concerned an importer, in which one of the Japanese exporters had acquired a significant minority share in September 1991. This shareholding was substantial and appeared to allow the exporter to exert considerable influence over the importer, the exporter's acquisition being accompanied by a structural programme to increase cooperation between the two companies. During the remainder of the investigation period of the review, this cooperation, as verified at the premises of the importer, appeared to be inconsistent with a normal arm's-length commercial relationship. A particularly notable aspect of this cooperation related to the pricing of PPCs from the exporter to the importer, which, at least in one case, appeared to vary according to whether or not the PPCs were subject to anti-dumping duty, thus raising the suspicion of absorption of the anti-dumping duty. Under these circumstances, it was considered that the criteria of Article 2 (8) (b) of Regulation (EEC) No 2423/88 had been met, in the sense that both an association and a compensatory arrangement appeared to exist which rendered the prices paid or payable between the exporter and the importer concerned unreliable. This importer and its subsidiaries in the Community were consequently treated as related importers within the meaning of Article 2 (8) (b).

(66) The same factual circumstances, and the consequent qualification as a related importer, also prevented this importer from being treated as an OEM importer. An essential characteristic of sales to OEM importers is that exporters incur significantly lower costs in respect of such sales, as marketing, distribution, and maintenance is all done by the OEM importer under the latter's own brand name and for its own account. The exporter can therefore charge lower prices, resulting in the claim that genuine OEM export prices are at a different level of trade from brand sales and should, for the purpose of a fair comparison, be compared with a similar level of trade on the domestic market. In this respect, this importer did sell the PPCs imported from the exporter concerned under its own brand names in the Community. However, this is not in itself sufficient to qualify as an OEM importer. If it were, it would be very simple indeed for exporters to have their subsidiaries in the Community qualify for the status of OEM importer, simply by having them sell under a different brand name, as some exporters were found to have done in this review. In order for export sales to qualify as having been made at the level of trade of an OEM importer, the information regarding sales prices between exporter and importer and the costs borne by each must be reliable. This criterion is, by definition, not met between related parties within the meaning of Article 2 (8) (b).

These conclusions were contested by the importer and exporter concerned. They argued that at least purchases ordered before the exporter's acquisition of its share holding should still be treated as unrelated. However, as described above, from the moment of that acquisition, the entire relationship between exporter and importer changed to a degree where the prices actually paid for all subsequent imports, whether ordered before or after the shareholding, became unreliable. The same applies to the costs. The fact that the Commission verified these costs and used them, with some corrections, to construct the export price, does not necessarily mean that these costs were accepted as entirely reliable.

(67) The same considerations applied even more strongly to a second importer. During the investigation period of the review, a majority of the capital of this importer was owned by one of the Japanese exporters. Given the exporter's majority share in the company, prices between exporter and importer and the costs incurred by each were considered unreliable. Although the importer sold the PPCs which it imported from the exporter concerned under the importer's brand name in the Community, that brand name is in fact owned and controlled by the exporter concerned. This importer could, therefore, not be treated as an OEM importer.

(68) In September 1991, the European headquarters of one of the Japanese exporters took a significant minority shareholding in a third importer, the name of which was changed in line with the brand name of the exporter concerned. As in the case of the first importer, this shareholding was so large as to make it likely, in the Comission's view, that the exporter was in a position to exercise restraint or direction over the importer. During the verification visit to this importer it was also found that advertising support was received from the exporter. It was therefore considered that also in this case an association or compensatory arrangement within the meaning of Article 2 (8) (b) of Regulation (EEC) No 2423/88 appeared to exist, which rendered the sales prices and distribution of costs between this importer and the exporter concerned unreliable.

Facts available

(69) A planned visit to a European subsidiary of one of the Japanese exporters could not take place, as the company did not supply necessary information regarding its cost structure in time. As a consequence, the Commission was not able to determine the costs incurred by this company in respect of sales made to first independent buyers by the other subsidiaries of the same group that had been visited. Based on the scarce information available to the Commission, it appeared, however, that the company clearly did perform functions that were of benefit to those other subsidiaries, such as collecting and disseminating marketing information, providing marketing assistance, standardizing accounting practices, giving legal assistance, undertaking pan-European advertising, providing services in the financial area, assisting in product development and product adaptation to the market, etc. In the absence of better, verified information, facts available had to be used, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88, *in casu* the SGA costs in the audited accounts of this company, to establish the costs incurred in providing the above — and possibly other — services.

Export price for related importers

(70) For related importers, export prices were constructed from the sales prices to the first independent buyers in the Community, minus discounts and rebates directly linked (including items free of charge), by deducting all costs incurred between importation and resale and a reasonable profit margin of 5 %. The profit levels found for unrelated importers could not be used to establish an appropriate profit margin, for two reasons. First, few unrelated importers replied to the questionnaire. Of these, the profit margin of one unrelated importer was verified, representing only a small percentage of total imports from Japan. Secondly, it was found that the profit margins of unrelated importers were artificially depressed, in line with the general price depression analysed further below for PPCs in the Community, as a result of having to compete with dumped Japanese brand sale imports sold through related subsidiaries in the Community. In the absence of reliable profit figures of unrelated importers, the Commission considered a 5 % profit margin a reasonable minimum in the ordinary course of trade, taking account of Commission practice in other cases, including in the original investigation. As requested by exporters, a single profit margin, always of 5 %, was used irrespective of the number of subsidiaries actually involved in the sales chain.

(71) PPCs sold to dealers at a lower price for demonstration purposes were included in the transactions used to calculate dumping, as the cost of demonstration should normally be borne by the dealer himself. Depreciation of stock, covering missing or stolen products or damaged or obsolete products destined for disposal, was considered as a cost incurred between importation and resale. Where old stocks of PPCs were not depreciated but sold, these transactions were included in the dumping calculation.

Export price for unrelated importers

(72) Export prices to unrelated importers, normally OEM purchasers, were calculated based on the actual prices for these transactions, less discounts and rebates directly linked (including items free of charge). Compensation paid to OEM purchasers for disadvantageous exchange rate fluctuations in connection with the sale of PPCs was considered as discount. Where exporters' subsidiaries in the Community incurred costs in respect of these sales, by carrying out certain activities that would normally have been undertaken by the importer (for instance the provision of advertising support) or by performing a role similar to that of a re-invoicing agent, the costs involved and a reasonable profit margin were deducted, in accordance with Article 2 (8) (b) of Regulation (EEC) No

2423/88. In this respect, the same 5 % profit margin was applied as for all sales through related importers, based on the method of using the same profit margin irrespective of the number of subsidiaries involved. While one exporter commented that this percentage was relatively high in the case of sales to OEM importers, it was precisely this exporter which had insisted, in the original investigation, that one and the same profit percentage should be used irrespective of the number of subsidiaries involved in the sales channel. It was considered that the 5 % deduction by the Commission for reasonable profit was low in respect of sales in Member States in which two or sometimes even three related susidiaries were involved, as well as in respect of sales to end-users, which implied an integrated chain of distribution, and that, therefore, the approach followed was reasonable.

4. Comparison

(73) Export prices and normal value were compared at the same level of trade. OEM export sales were compared with the weighted average normal value of OEM domestic sales. As for the own-brand export sales, which had to be constructed in almost all cases, these were compared with the weighted average normal value of all domestic own-brand sales channels, given that these were not consistently distinguishable from each other, and that therefore insufficient evidence existed that one type of sales channel would be more comparable to the export sales than another.

(74) Where sufficient evidence was submitted, appropriate adjustments were made in respect of differences in physical characteristics and selling expenses. No adjustments were claimed for any difference in import charges and indirect taxes. With respect to salesmen's salaries, only the salaries paid to personnel wholly engaged in direct PPC selling activities were deducted, to the exclusion of staff that partly or entirely exercised management functions, and to the exclusion of service and sales support personnel. This approach was based on Article 2 (10) (c) (v) of Regulation (EEC) No 2423/88, which states that an allowance can be granted only for personnel wholly engaged in direct selling activities. Where PPC salesmen were found to be selling other products or services as well, the turnover concerned was included for the purposes of calculating the percentage deduction for PPCs.

The total allowances for normal value were calculated as an absolute amount per model per unit sold. This absolute amount, representing the allowable cost per unit actually incurred, was then deducted from the normal value calculated for the model in question.

5. Dumping margins

(75) Dumping margins were calculated as the total absolute amount of dumping on verified import sales divided by the total cif value as declared to customs of all verified imports, whether or not dumped. The dumping margins for brand sales (only partly verified) and OEM sales (all verified) were weighted to take account of the actual ratio in terms of cif value between these two types of export sales. In this respect, dumping found for the verified part of the brand sales was considered representative of all brand sales.

(76) In the case of related importers, the existing anti-dumping duty was deducted as a cost between importation and resale, in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88. For PPCs over 75 copies per minute, no anti-dumping duty was in force and thus no anti-dumping duty was deducted. On this basis, the dumping margins found varied between 21,5 and 83,9 %. They were significantly higher for each exporter concerned than the rate of the original anti-dumping duty pertaining to that exporter. The weighted average dumping margin was 41,0 %.

(77) The effect of this high degree of dumping on the Community market place was far from being completely offset by the existing anti-dumping duty. When, in order to evaluate the effectiveness of the original anti-dumping duty, this duty was not deducted as a cost in the case of related importers, and added to the export price in the case of unrelated importers, the weighted average effect of the dumping on the Community market was still as high as 28,8 %, with individual rates varying between 13,5 and 74,4 %.

(78) In conclusion, the review showed that the existing anti-dumping duty has not led exporters to revise their pricing to an extent that dumping was eliminated, nor has it offset the effect of the dumping on the Community market. Given the high dumping margins found in the review investigation, it is considered that if the existing duty were allowed to lapse, dumping would be likely to continue at the same or even higher margins. The abolition of the anti-dumping duty can, if anything, only further increase the level of dumping to the extent that the lower costs for exporters selling in the Community through related importers could result in further price decreases.

G. RECURRENCE OF INJURY

1. Effect of dumped imports from Japan

(79) Despite the existing anti-dumping duty, Japanese exporters, selling mostly through related importers, were, in the investigation period of the review, undercutting the prices of the Community industry in the Community market place with their PPCs imported from Japan by a weighted average of 26 %, with a sales volume that, although significantly declining, still represented 26 % of units placed in the Community. As PPCs are a mature product, with relatively limited technical differences among producers and with price thus playing an important role in the customer's choice, it is clear that such a large volume of imports at such low prices could not fail to have a significant negative impact on the economic performance of the Community industry, showing itself in insufficient profitability and declining market shares and production volumes for that industry.

(80) Any reduction in injury that might be derived from the decrease over time in the Community market share of Japanese PPCs, has been offset by the fact that in terms of models, those imports have become especially injurious. In the original investigation the large bulk of imports from Japan consisted of small PPCs. These gave the Japanese exporters a large market share measured in units, but their injurious effect was limited by the fact that Océ and Rank Xerox had traditionally focused on the more important large PPCs and continued to have a strong technical and market position and adequate profitability on those large models. Since then, however, almost all of the Japanese exporters have shifted a large part of their production of small PPCs (in particular mature models of relative simplicity) to the Community or to other third countries and have concentrated on exporting to the Community the more sophisticated segment 4, 5 and 6 models they have come to produce in Japan. In view of the fact that a weighted average degree of undercutting was determined for segments 4 and 5 which was twice the level of undercutting for segments 1 to 3 (38 % compared to 19 %), the imports from Japan exerted very strong downward pressure on the prices, profitability and market share of the Community industry in these segments. For instance, in segment 4 (PPCs capable of making 45 to 59 copies per minute), Community industry's market share in the Community decreased from 64,4 % in 1988 to 42,1 % in the investigation period of the review, a dramatic fall of 22,3 %. Most of the segment 4 PPCs and all segment 5 PPCs competing with the segment 4 PPCs of the Community industry in the investigation period of the review were produced in Japan.

(81) Given the pricing aggressiveness of the Japanese exporters already found with the existing anti-dumping duty in force, it is considered that undercutting and price depression caused by dumped imports from Japan could only worsen if the duty were allowed to lapse, as Japanese exporters would be likely to use at least part of the cost reduction resulting for their related importers from an expiry of the anti-dumping duty to reduce yet further resale prices in the Community. This likelihood is considered all the greater as the introduction of lower prices by just one major player in the PPC market would, for such a price-sensitive product, put great pressure on the other players to follow suit, leading to an even more ruinous price war than already exists. The consequences of any further price decrease for the Community industry would be serious, as PPCs constitute for each producer the mainstay of their business, which should provide the profits necessary to make the investments required to remain viable in the medium term. Any of these firms could decide to stop production and become a mere OEM purchaser, deriving revenue from service and supplies only, as other Community producers have already been forced to do in past years. They could

also replace part of their range of own-manufactured models with OEM purchases. The experience of recent years has shown that parts of the Community industry's own production, especially in the lower segments, had to be sacrificed when losses became too great. The aggressiveness of Japanese exporters' pricing in the higher segments means that danger could now arise even for the higher segments.

(82) With respect to volumes of imports, during the investigation period of the review, the economic situation in Japan deteriorated, demand stagnated, and stocks increased by 65 % to a level of 300 000 units, more than the annual volume of exports to the Community during the investigation period Capacity utilization was also decreasing. If duties were allowed to lapse, the incentive to increase exports from Japan to the Community, at prices covering variable costs of production at most, would be great, quite possibly even to the extent of closing Japanese PPC factories in the Community in order to improve capacity utilization in Japan. The existing trend towards decreasing volumes of imports from Japan could thus be stopped or even reversed if duties were allowed to lapse. This would be even more likely if the yen were to depreciate in the coming years against the European currencies. With the behaviour of currencies being as volatile as it is, this development cannot be excluded.

2. Other allegedly injurious factors

(83) The Commission examined whether a fall in demand for PPCs in the Community market could have caused the precarious situation of the Community industry. This was not found to be the case. Between 1988 and the investigation period of the review the Community market for PPCs expanded by 24 %. However, the Community industry's sales in the Community declined by 1 % over the same period, leading to a decrease in their market share in the Community from 15,4 to 12,4 %.

(84) The argument by some exporters that a period of economic recession in the Community was the cause of the precarious situation of the Community industry in the investigation period of the review, is also considered to be unfounded. The economic recession in the Community began, except in the United Kingdom, only in the second half of 1992, after the end of the investigation period. Thus, while total PPC consumption has decreased by around 10 % following the end of the investigation period, it had still been climbing strongly between 1988 and the investigation period and remained stable during the investigation period itself. To the extent that demand may have shifted somewhat towards second-hand PPCs, the Community industry did not suffer from this, as it is strongly represented in this market (as are the dealers of the Japanese producers). Furthermore, while the profitability of the Community industry in the Community for its products and services other than PPCs declined from an index of 100 in 1988 to 76 in the investigation period of the review, Community industry's profitability on PPC hardware sales in the Community dropped much more steeply from an index of 100 in 1988 to 24 in the investigation period of the review. This suggests that sales of PPCs by the Community industry were under severe additional pressure from sources other than the general economic conditions. Some exporters commented that the relatively better performance of overall profitability could be due to customers postponing the replacement of their PPC and spending more on maintaining their existing PPC. However, as mentioned above, between 1988 and the investigation period, sales of PPCs in the Community increased by 24 %, which contradicts the argument that customers had postponed purchases of new machines.

(85) It was suggested by certain exporters that PPCs produced by Japanese companies in the Community and in third countries had also been causing injury to the Community industry, and that the Commission should quantify what part of the injury should be attributed to each. It may be observed, in this respect, that neither of these two other sources of sales in the Community was the object of the present review, so that the possibility for the Commission to obtain relevant information was limited. Furthermore, none of the Japanese exporters volunteered any information on the degree to which their PPCs produced in third countries other than Japan and in the Community were alleged to cause injury to the Community industry. Nevertheless, it was considered reasonable to assume that the prices of PPCs which Japanese companies produce in the Community and which they produce in and import from third countries other than Japan are not likely to be significantly out of line with the prices of PPCs imported from Japan, as major price differences in the Community between similar PPCs produced by the same company probably could not be sustained. In this sense, it was considered likely that PPCs sold by Japanese companies from these sources other than

Japan likewise contributed to the injury suffered by the Community industry. It was also noted that the relative importance in the Community market of PPCs from these other sources had increased continuously, to a market share of 61,8 % in the investigation period of the review (consisting of 12,8 % imports from third countries other than Japan and 49 % estimated Community sales of PPCs produced by Japanese companies in the Community.

Nevertheless, the market share of 26 % held by the imports from Japan, combined with the undercutting level of 26 % found for those imports, is considered to be in itself a significant cause of the poor economic situation of the Community industry. In order to defend its market share against such a large volume of unfairly low-priced imports, the Community industry was forced to lower its own sales prices to levels that resulted in an important shortfall of profitability on their sales of PPCs. The argument that PPCs of Japanese companies from other sources were probably sold at similarly low prices, does not change the fact that even in their absence the Community industry would still have had no choice but to follow the price lead of the imports from Japan, sold as they were in such important volumes. Those imports were, therefore, taken in isolation, sufficient to cause price depression and a significant shortfall in profitability for the Community industry. As mentioned before, they were also the main cause of the dramatic loss of market share of the Community industry in segment 4 PPCs and the sole cause of sales lost by the Community industry in segment 6, since all segment 5 and segment 6 PPCs and the great majority of segment 4 PPCs introduced by Japanese companies on the Community market in the investigation period of the review originating in Japan. For the other segments, imports from Japan probably combined with PPCs from other sources to cause loss of market share and lack of profitability to the Community industry.

Although Article 4 (1) of Regulation (EEC) No 2423/88 requires the Community authorities not to attribute to dumped imports injuries caused by other factors, this requirement is satisfied where it is shown, as described above, that dumped imports, taken in isolation, have been an independent cause of the poor economic situation of the Community industry, even if other factors may also have contributed to that situation. Thus, even if it were assumed that imports from other third countries and sales from Japanese production facilities in the Community have contributed to the precarious situation of the Community industry, this would not alter the fact that dumped imports from Japan, taken in isolation, caused the poor economic situation of the Community industry.

(86) As for the argument that the Community industry inflicted injury upon itself by importing and selling in the Community PPCs originating in Japan, it has already been mentioned that the number of PPCs imported from Japan by the Community industry and sold in the Community in the investigation period of the review declined dramatically in comparison with the original investigation. The percentage of PPCs imported by the Community industry from Japan and sold in the Community in the investigation period of the review represented less than 1 % of its production of PPCs. Any negative impact of such imports on the situation of the Community industry can therefore be ignored.

Not only was the quantity of PPCs imported from Japan by the Community industry very small, the fact of buying part of one's product range from other producers is now a common and normal business strategy even among Japanese producers. Selling dumped PPCs from Japan in the Community, as practised by Océ, but not by the other two Community producers, may be seen as a legitimate act of self-defence in view of the need to sell in the Community market in competition with other dumped PPCs from Japan. Indeed, had Océ failed to do this, the injury on its own-manufactured PPCs would in all likelihood have been larger still, as it would then have lost a number of customers needing an assortment of PPCs ranging from small to large.

3. Conclusion

(87) The above considerations, and in particular the finding that notwithstanding the existing anti-dumping duty, significant volumes of highly dumped imports from Japan were sold on the Community market at very low prices, causing serious detriment to the Community industry, lead to the conclusion that if the anti-dumping duty in force were allowed to lapse, material injury caused by dumped imports from Japan would recur.

H. COMMUNITY INTEREST

1. General

(88) The general purpose of anti-dumping measures is to eliminate trade-distorting effects of dumping practices and thus to restore effective competition on the Community market. Effective competition is fundamentally in the Community interest, both as a general policy objective and in terms of the interests of Community producers and consumers.

2. Original findings

(89) With respect to the specific case of dumped PPC imports from Japan, the interests of producers, consumers and unrelated (mainly OEM) importers, such as Agfa Gevaert, in the Community had already been examined extensively in the original investigation. At that time, it was concluded that the Community's interest in maintaining a viable Community PPC manufacturing industry capable of competing with imports from Japan on fair terms outweighed the short-term interest of consumers in profiting from unfairly low prices, for as long as they would last, as well as the interests of OEM importers, who profited from distributing, under their own brand, dumped imports from Japan at the expense of sales of PPCs produced by Community industry. Regarding OEM importers it was considered, in particular, that the Community interest in a Community industry which both produces and distributes PPCs is, other things being equal, greater than in European companies which essentially distribute under their own brand PPCs produced in Japan.

3. Findings in the review

Community interest in PPC production

(90) With respect to the Community's interest in maintaining a viable PPC industry in the Community, this has, if anything, increased from the time of the original investigation. It is estimated that close to 23 000 people are employed full-time in the Community to manufacture, distribute, service and sell the PPCs produced by the Community industry, of whom 12 000 are employed in manufacturing (including those working full-time at Community companies supplying parts and sub-assemblies for Community PPC producers). While PPC technology has become mature, it is still a highly complex and sophisticated process, combining chemical, optical, electronic, mechanical and software know-how. The PPC of today also forms an important technological starting point not only for the production of digital copiers, printers and faxes, but also for a whole new generation of multi-purpose, networked office products to be introduced in the years to come.

(91) Furthermore, after anti-dumping measures were introduced in 1986, almost all Japanese producers established or expanded PPC production facilities in the Community. As a result, Japanese PPC production in the Community, which had been less than 50 000 units in 1984, increased to 643 719 units in the investigation period of the review. Although the anti-dumping duties may not have been the only reason for this strongly increased Japanese production in the Community, it can hardly be doubted that they did significantly influence this development. In the wake of these factories, a strong supplier industry also developed within the Community, representing, in all likelihood, more employment than the Japanese factories in the Community themselves or than the 6 000 workers involved full-in supplying the Community industry.

As already mentioned, if duties were to lapse, there would be an incentive for the Japanese exporters to cut production in the Community to reduce the significant stocks existing in Japan and to improve capacity utilization there. This rationale would apply especially to the larger PPCs, which could be supplied world-wide from a single source, Japan. In addition, the lapsing of the duties in the face of high dumping would probably be interpreted by the Japanese producers as meaning that the Community authorities no longer attached importance to maintaining a photocopier industry in the Community. As a result, the economic advantages of producing small and relatively simple PPCs in third countries with low labour costs, rather than in the Community where most Japanese companies produce them now, would become more alluring. There will be a point where cost/benefit considerations will outweigh even strategic considerations relating to maintaining a manufacturing presence in the main global markets, especially since at least one other Japanese producer has no production facilities at all in the Community and competes

strongly on the Community market with PPCs made with low labour costs in a third country. If this trend were followed, the final result could be a severely limited Japanese PPC manufacturing presence in the Community. If the production of several if not all of the Japanese production facilities were to be closed or switched to other products, this would be serious in itself. However, probably the biggest disadvantage would be that a myriad of small and medium-sized Community suppliers now providing the Japanese assembly facilities with parts, would be without clients. It is precisely this strong reliance by the Japanese assembly facilities on outside suppliers, entailing minimal capital investment in assembly plants, that would limit their shutdown costs if they decided to cease assembly in the Community.

Interest of importers

(92) Certain importers claimed that they suffered from the anti-dumping duty in that they were unable, whether partially or entirely, to pass this cost on to consumers, leading to reduced profitability and loss of employment in their companies. It is evident that the imposition of an anti-dumping duty is not to the advantage of importers, which have to pay the anti-dumping duty and which are therefore less able than before to undercut the prices of the Community industry with dumped imports. However, it is precisely the intention of the introduction of an anti-dumping duty that the sales prospects for the Community industry be improved in relation to those of importers selling dumped products. In addition, it was noted that this claim was made by importers, such as Agfa Gevaert, which sell the PPCs which they purchase in Japan under their own brand in the Community. The profitability of such companies is likely to have been affected at least as much by the tendency of their Japanese PPC suppliers gradually to expand their own brand sales network in the Community at the expense of sales under the importer's brand. While some employment in sales and service activities may have shifted from these importers to the Community industry or to Japanese sales subsidiaries in the Community, this employment remained in the Community. This situation should be distinguished from the net loss of manufacturing employment which, as described above, it at stake for the Community if duties were allowed to lapse.

The importer Agfa Gevaert also advanced the argument that the anti-dumping measures on PPCs from Japan endangered its direct investments in PPCs in Japan. Upon verification, however, it was found that such no direct investments existed.

Interest of Community consumers

(93) It was estimated that an amount of around ECU 500 million was collected in anti-dumping duties on PPC imports from Japan from their introduction in August 1986 to the end of the investigation period. However, given the continued effect of dumping on the Community market and the high undercutting margins found, it would appear that a large part of this amount was not charged to Community consumers.

(94) If duties were allowed to expire, consumers would benefit to the extent that the Japanese exporters and unrelated importers decided to use their reduced costs to further decrease resale prices in the Community of PPCs imported from Japan. If maintaining the duty led to no price movement, the situation would continue as mentioned in recital 93. If maintaining the duty led to a price increase to consumers with the full amount of the anti-dumping duty, if imports continued at the same level as at present, and if PPCs not imported from Japan did not increase in price, the estimated cost to Community consumers of a continuation of the measures would be ECU 42,5 million per year. This figure is based on a weighted average anti-dumping duty of 16,3 % for the exporters investigated, multiplied by a total customs value of PPCs imported from Japan in 1994 of ECU 260,8 million. Such a price increase on PPCs imported from Japan would, however, be quite unlikely, given that the duty would remain at the same level as before. Even if a price increase of PPCs from Japan did take place, it would be likely to lead to their partial or complete replacement by PPCs from other sources, whether from sales by the Community industry or from sales of PPCs produced by the Japanese companies in the Community or in other third countries. The Community industry would probably want to use part of the breathing space created to increase sales volumes rather than increase prices up to the full margin possible. As for the Japanese producers, there is no reason why they would change the pricing strategy of their PPCs not imported from Japan, especially because they compete among themselves and are still subject to competition from low-priced imports from third countries other

than Japan. A general price increase of all PPCs sold in the Community is therefore extremely unlikely. In general, in a competitive market for a mature product such as photocopiers, it takes only one or a few large sellers to force the general price level down, but it takes a general cost increase or the participation of all or most large sellers to get the general price level up. If one company increased its prices in isolation, it would be forced to rethink this strategy very quickly.

(95) It is in the long-term interest of consumers to maintain a variety of sources of supply and competition. Two of the smaller Japanese exporters observed that their continued operation might be endangered if the anti-dumping duty on PPC imports from Japan were maintained, which would reduce competition. However, of these two companies one was already majority-owned by one of the largest Japanese companies, while the other exported the bulk of its PPCs to the Community from a third country. The Community authorities were, therefore, more concerned about the reduction in sources and variety of supply which could result from the disappearance of one or more of the remaining Community producers. Around 85 % of the Community market measured in units (and around 70 % measured in units weighted by copy volume) was already in the hands of the nine Japanese exporters investigated, whether exporting from Japan, from third countries, or producing in the Community, even though, as mentioned above, these Japanese companies did compete among themselves during the investigation period of the review.

(96) Some exporters and one importer pointed to the strong position in terms of market share of the Community industry in segment 6 to argue that this segment, or part of it, should be excluded from the duties. However, given that Rank Xerox, Océ and Kodak sell in segment 6 and compete between themselves, and that anti-dumping duties will not prevent Japanese exporters from exporting segment 5 or segment 6 PPCs to the Community (or from producing them in the Community or third countries), but merely from selling them at unfairly low prices, it was considered that this alleged risk to competition in segment 6 was outweighed by the Community industry's interest in receiving protection from dumped imports. This is the more so as segment 6 should not be considered as a product in itself, but merely as a small part of a product, PPCs, in which Japanese companies occupy a very strong market position in the Community.

4. Conclusion

(97) It was considered that, on balance, it is in the overall Community interest that anti-dumping measures on PPC imports from Japan should not be allowed to expire at this time.

I. MEASURES

1. General

(98) The question governing this review was, in accordance with Article 15 (3) of Regulation (EEC) No 2423/88, whether the expiry of the measures in force would lead again to injury or threat of injury. Based on the above analysis, this question must be answered in the affirmative. Taking account of the Community interest, the Council concluded that anti-dumping measures should be maintained.

2. Product scope

(99) When the anti-dumping measures on PPCs from Japan were first introduced, PPCs capable of operating at a speed of more than 75 copies per minute of A4 size paper were excluded from the scope of the measures, as there were, at that time, no imports from Japan of those copiers. Since then, however, such imports, at dumped prices, have increased strongly and were shown to be especially injurious to the Community industry. It was therefore deemed necessary now to include such PPCs in the scope of the measures.

The new measures will thus cover the entire product investigated, i.e. PPCs ranging from personal copiers to segment 6. Personal copiers, although not produced by the Community industry, compete with segment 1 PPCs that were produced by the Community industry during the investigation period, and their continued inclusion is therefore justified. For segment 6 PPCs, already one Japanese exporter had started importing such PPCs into the Community, while there is also competition with segment 5, which is dominated by the Japanese exporters. If either personal copiers or segment 6 copiers were excluded from the measures, not only would dumped imports in these segments continue to injure the Community industry, but the risk of circumvention of the anti-dumping measures on segments 1 and 5 would be considerable, as it would be possible for exporters to change the copy speed or features of the PPC in such a manner as to fall within the adjoining segment, without essentially changing the model.

These considerations are not invalidated by the fact that on a weighted average basis, the Community industry obtained an adequate return on sales of segment 6 PPCs during the investigation period. First, the operating results for individual Community producers on segment 6 PPCs differed substantially, with one of the two Community producers suffering losses in that segment. Secondly, injury was determined for the like product as a whole, in accordance with Article 4 (4) of Regulation (EEC) No 2423/88. The profitability of the Community industry, one of the key injury criteria, would have been worse if segment 6 had been excluded. Thirdly, in contrast to the situation prevailing in the original investigation period, segment 6 is now both produced in the Community and imported from Japan. It would be inappropriate to identify injury for each product segment or each model separately and to exclude from the measures segments or models that happened to be commercially more successful during the investigation period.

3. **Rates of the duty**

(100) It was considered that the existing anti-dumping duty has been effective in significantly reducing the volume of PPC imports from Japan, and that other factors, notably the prices and volumes of PPCs sold in the Community and produced by Japanese companies in the Community and in third countries other than Japan, were likely to be contributing to the precarious situation of the Community industry. On balance, therefore, the Council considered that confirming the existing duty at its current levels should give adequate protection to the Community industry, given the continuous downward trend in PPC imports from Japan and the fact that the measures will now cover PPCs capable of operating at a speed of more than 75 copies per minute of A4 size paper.

(101) Some exporters and the Community industry argued that the rate of the new anti-dumping duty should be amended for each exporter based on the lower of its dumping and underselling margins. They noted that the review investigation had been initiated not only on the basis of Article 15 of Regulation (EEC) No 2423/88, but also of Article 14 of that Regulation, and that Article 14 (3) provided for the amendment, where warranted, of the measures in force. They claimed that discrimination occurred between exporters, as lower duty rates were applied to some than others whilst they had similar dumping or underselling margins, and the same duty rate was applied to other exporters even though they had different dumping or underselling margins. In this respect, the following observations should be made : Firstly, Articles 14 and 15 appear together under the heading 'review' in Regulation (EEC) No 2423/88. Article 15 should, therefore, be read in conjunction with Article 14, especially the procedural provisions thereof. Secondly, the word 'confirmed' in Article 15 (1) would serve no purpose if the new measures always had to be based on the lower of the dumping and underselling margins, since it is highly unlikely that the duty rates derived from such a calculation would, for each exporter, be identical to the existing rates, resulting in the existing duties being 'confirmed' by the review investigation. The Community authorities nevertheless clearly have the right under Article 15 (1) to 'confirm' the existing measures. Thirdly, the confirmation of existing measures is especially appropriate where they have had some beneficial effect, as in this case through the significant reduction of the volume of imports, but not yet enough to permit their expiry. In the present case, it is considered that maintaining the duty rates at their current level will in fact provide adequate protection to the Community industry, and that it is therefore simply not necessary to increase the duty rates. Finally, with respect to the claim of discrimination between exporters, it should be noted that the existing rates now confirmed by the Council are, for each exporter, significantly lower than its dumping and underselling margins found in the review, calculated in the manner indicated above. While the difference in benefit is larger for some exporters than for others, the same result is inherent in the 'lesser duty' rule laid down in Article 13 (3) of Regulation (EEC) No 2423/88, under which the same duty rate based on injury may be applied to all exporters, even though some have higher dumping margins than others. In the original investigation, for instance, the duty rate based on a global injury assessment was 20 % for all exporters (except those with lower dumping margins), even though the dumping margin of these exporters varied between 22 and 60 %. The degree to which the three exporters with lower duty rates now benefit, compared to the lower of their dumping and underselling margins, is not necessarily larger than the degree of benefit of exporters to which a 20 % duty rate is applied, as compared to the lower of their dumping and underselling margins.

(102) The exporter Ricoh claimed that it was the only exporter whose dumping margin had decreased and that it should be rewarded for this is in the sense that the existing anti-dumping duty should not be deducted to calculate its new dumping margin. On

that basis, it claimed a lower duty than 20 %. It was found that Ricoh was correct in claiming that it was the only exporter whose dumping had decreased since the original investigation. This circumstance cannot, however, lead to the non-deduction of the existing anti-dumping duty for the determination of the duty to be applied, since Article 2 (8) (b) of Regulation (EEC) No 2423/88 clearly provides that anti-dumping duties should be deducted as a cost for related importers in the calculation of the export price. In terms of injury, the reduction in this exporter's dumping margin could just as well have been due to a decrease in its normal value. The undercutting margin for this exporter, which was just below the weighted average for all exporters, supports this hypothesis and indicates that its export prices contributed to the poor economic situation of the Community industry. Its claim for a reduced duty was therefore not considered justified or possible pursuant to Regulation (EEC) No 2423/88.

4. **Period of operation**

(103) With respect to the period of operation of the measures, the Council noted that, due to the unusual complexity of a number of aspects of this case, significant delays were incurred in its treatment. First, nearly six months elapsed between the notice of the Commission's intention to carry out a review of the measures and the actual initiation of that review. Then, the review investigation itself, which was initiated on 14 August 1992, took more than three years to complete. In accordance with Article 15 (3) of Regulation (EEC) No 2423/88, the original anti-dumping duty on PPC imports from Japan remained in force during this entire period. The Council therefore considers it reasonable that, in these exceptional circumstances, the period of operation of the new measures should be limited, to expire two years after their entry into force, subject to the applicable provisions on reviews.

(104) Some exporters and importers commented that the Community industry had already had eight years of protection through anti-dumping measures, that this was long enough, and that the measures should now be allowed to lapse. However, there is no statutory time limit to the period of operation of anti-dumping measures other than the five-year period mentioned in Article 15 (1) of Regulation (EEC) No 2423/88. As that Article itself makes clear, a review held at the end of this time limit can, where warranted, lead to the confirmation, as in this case, of the existing measures for a new period. Also, while the existing anti-dumping measures have been in force for eight years, this review has shown that their effectiveness in protecting the Community industry has been limited by the fact that due to the behaviour of the Japanese exporters the effect of dumping on the Community market, manifested by price depression and undercutting, remains substantial.

5. **Residual duty**

(105) The verification visits to cooperating exporters covered the near totality of PPC exports from Japan to the Community during the investigation period. It was considered appropriate that for those companies which did not cooperate in this review, the residual duty be set at the highest of the individual duty rates for the exporters investigated, i.e. at 20 %, in the absence of any information justifying a higher or lower level. The same rate should apply for those companies which did not export to the Community during the investigation period. However, for the latter companies, this is subject to the possibility of a newcomer review pursuant to Article 11 (4) of Regulation (EC) No 3283/94.

6. **Undertakings**

(106) It was considered that the undertaking of Kyocera Corporation, Kyoto, under which it was committed to giving the Commission sufficient advance notice if it were to recommence exports to the Community, should be allowed to lapse.

(107) As regards the undertakings given pursuant to Article 13 (10) of Regulation (EEC) No 2423/88, the Commission has received regular information enabling it to verify the undertakings given. The weighted average value of parts and materials of Japanese origin used in the assembly or production of PPCs in the Community has remained at less than 60 % of the total value of all parts and materials. The undertakings will lapse at the end of the investigation,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of plain paper photocopiers falling within CN codes ex 9009 12 00 (Taric code : 9009 12 00*19) and ex 9009 21 00 (Taric code : 9009 21 00*19), originating in Japan.

2. For the purpose of this Regulation, plain paper photocopiers shall be understood to mean analogue, indirect-process copiers incorporating an optical system, irrespective of their copy speed and whether imported as a whole or in modules. Such copiers are formed by four basic elements, i.e. imaging, photo-conducting or developing, transfer or fixing and paper transport system. Digital copiers, which use a scanner and an image processor to transform an original image into a digital signal and then recompose that signal, with or without changes, into a copy, do not form part of this proceeding and are thus not subject to the duty. In addition, the following products shall not be subject to the duty:

— analogue full-colour copiers (machines which have the capacity to make full colour copies automatically from corresponding coloured originals in one copying cycle by means of a polychromatic process),

— aperture card reader printers and microfilm printers (machines which have the capacity to read images from and make enlarged copies of microfilms, microfiches and aperture cards),

— whiteboard copiers (machines which have the capacity to make copies from information displayed on screens), and

— large format copiers (machines capable of making copies of A2 size and larger from originals larger than A2 size).

For the avoidance of doubt, highlight PPCs (PPCs which reproduce only a few colours to draw attention to certain segments of a document) and A2 size PPCs (PPCs capable of making A2 size paper copies — but not larger — from A2 size paper originals or larger) shall be subject to the duty.

3. The rate of the duty shall be 20 % of the net, free-at-Community-frontier price, before duty (Taric additional code: 8841), with the exception of imports which are manufactured by the following companies, which shall be subject to the following rates of duty:

-- Copyer Company Limited, Tokyo: 7,2 % (Taric additional code: 8838),

-- Mita Industrial Company, Osaka: 12,6 % (Taric additional code: 8839),

-- Toshiba Corporation, Tokyo: 10 % (Taric additional code: 8840).

Article 2

Regulation (EEC) No 535/87 is hereby repealed.

Article 3

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

It shall expire two years after its entry into force, save that should any review of the measures adopted by this Regulation be pending on that date, it shall remain in force until that review is concluded.

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

Done at Luxembourg, 2 October 1995.

For the Council

The President

J. SOLANA