COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.12.1995
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Proposal for a

COUNCIL REGULATION (EC)

imposing definitive anti-dumping duties on

imports of microwave ovens originating in
the People's Republic of China, the Republic of Korea, Malaysia and Thailand
and collecting definitively the provisional duty imposed

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. By Regulation (EC) No 1645/95 of 5 July 1995[1], the Commission imposed provisional anti-dumping duties on imports into the Community of microwave ovens originating in the People's Republic of China, the Republic of Korea, Thailand and Malaysia, falling within CN code 8516 50 00.

2. By Council Regulation (EC) No 2580/95 of 30 October 1995[2], the Council extended the validity of these duties for a period of two months.

3. Certain parties requested and were granted hearings and presented written comments which were taken into account where appropriate. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

4. The definitive determination confirmed the existence of dumping. Changes in the individual margins compared to the provisional findings are due to reassessments of the cost of production and allowances determined with respect to individual producers.
Both Chinese producers requested individual treatment. As not all the conditions the Community Institutions have applied to grant such a treatment in the past were met, it is considered that neither of the two Chinese companies should be given individual treatment.

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[1] O.J. No L 156, 7.7.1995, p. 5
[2] O.J. No L 263, 4.11.1995, p. 1

5. The conclusion that the complaining industry suffered material injury is also confirmed. For the purpose of the determination of material injury, the imports from these countries were analysed cumulatively because it was found that the imports from each of these countries competed with each other and with the like product of the Community industry, that import volumes from each of the countries concerned were significant in the investigation period and that price trends were similar.

6. The Commission established the causal link between the dumped imports and the injury suffered by the Community industry. It is the size of the dumped imports, their low prices and the fact that such imports went to the same channels as sales of the Community industry that led to this conclusion.

7. In light of the investigation findings, it is considered in the Community interest that definitive duties should be imposed. The level at which the definitive duties should be set was determined by the dumping margins found which were lower than the injury level. These dumping margins ranged from 3.3% to 24.4% for the Republic of Korea, from 14.3% to 27.3% for Thailand, was 29.0% for Malaysia and 12.1% for the People's Republic of China.

8. One Chinese producer offered an undertaking. The Commission considered the offer as not acceptable because it was considered not to remove injurious dumping.

9. It is therefore proposed that the Council adopts the draft Regulation annexed imposing a definitive anti-dumping duty on imports of microwave ovens originating in the People's Republic of China, the Republic of Korea, Thailand and Malaysia.

Council Regulation (EC) No ..../95 imposing definitive anti-dumping duties on imports of microwave ovens originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand and collecting definitively the provisional duty imposed

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[3], as last amended by Regulation (EC) No 1251/95[4], 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[5], as last amended by Regulation (EC) No 522/94[6] and in particular Article 12 thereof,

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

WHEREAS :

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3 OJ No L 349, 31.12.1994, p.1.
4 OJ No L 122, 2.6.1995, p.1.
5 OJ No L 209, 2.8.1988, p. 1.
6 OJ No L 66, 10.3.1994, p. 10.

I. Provisional Measures:

(1.) The Commission, by Regulation (EC) No 1645/95[7], hereinafter referred to as "the provisional duty Regulation", imposed a provisional anti-dumping duty on imports into the Community of microwave ovens (hereinafter referred to as "MWOs") originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand.

By Regulation (EC) No 2580/95[8] the Council extended the validity of this duty for a period of two months expiring not later than 7 January 1996.

II. Subsequent Procedure:

(2.) Following the imposition of the provisional anti-dumping measures the following interested parties submitted comments in writing:

1. Community industry:

- GIFAM, the complainant and the following individual complaining Community producers:
- AEG - Germany,
- Groupe Moulinex S.A. - France,
- Thomson Electromenager - France.

2. A company with an MWO production located in a Member State newly part of the Community:

- Whirlpool Europe B.V. - Sweden ("Whirlpool").

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7 OJ No L 156 of 7.7.95, p. 5

8 OJ No L 263 of 4.11.95, p. 1

3. The following producers/exporters:
- Beijing Sampo Electric Co. Ltd - China together with Vegary Ltd - Hong Kong,
- Whirlpool SMC Microwave Products (China) Co. Ltd[9],
- Daewoo Electronics Co. Ltd. - Korea ("Deawoo") and its related importers in the Community,
- LG Electronics Co. Ltd. - Korea ("LG Electronics") and its related importers in the Community,
- Korea Nisshin Co. Ltd - Korea ("Korea Nisshin"),
- Samsung Electronics Co. Ltd - Korea ("Samsung Korea"), and its related importers in the Community,
- Samsung Electronics (M) SDN.BHD - Malaysia ("Samsung Malaysia")and its related importers in the Community,
- Acme Industry Co. Ltd - Thailand ("Acme").

4. An organisation representing importers into the Community, the Foreign Trade Association ("FTA"), Köln.

(3.) Those parties who so requested were granted an opportunity to be heard by the Commission.

(4.) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

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9 The ownership of one producer located in China, i.e. SMC Microwave Products (China) Co. Ltd, changed after the investigation period. As a consequence the name of the Chinese producer changed.

(5.) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.

(6.) The parties' oral and written comments were considered, and the conclusions altered where deemed appropriate.

(7.) Owing to the complexity of the case, in particular due to the number of exporting countries and parties involved, the investigation overran the normal duration of one year provided for in Article 7 (9) (a) of Regulation (EEC) No. 2423/88 (hereafter referred to as the 'basic anti-dumping Regulation').

III. Product under consideration and like product:

(8.) As no new evidence and comments have been presented regarding the product under consideration and the like product, the findings set out in recitals (7) to (10) of the provisional duty Regulation are confirmed.

IV. Dumping:

A. China:

1. Volume of Chinese exports to the Community:

(9.) The investigation carried out with respect to MWOs originating in China had revealed at the provisional stage that the export volume to customers located in the Community reported by the two cooperating producers located in China was higher than the import volume from China reported in the Community import statistics for the investigation period.

One Chinese producer claimed that import statistics should be used instead of the information provided by the cooperating Chinese producers. Although it was not possible to assess decisively the reason for the discrepancy, it was concluded that the determination of export/import volumes as well as export/import prices should be based on the specific information submitted by the Chinese producers which was verified at the premises of these producers' related exporters in Hong Kong and which covered these producers' exports of MWOs with the Community as final destination.

It was considered that only in the absence of such information should generally available statistical information be used.

2. Normal value:

(10.) One Chinese producer argued that the normal value established based on Korean prices appeared inappropriate given the higher degree of sophistication of MWOs sold on the analogue country market.

In respect of the above submission, it should be noted that the normal values for by far the great majority of MWOs exported from China were constructed on the basis of the cost of manufacturing models exported by the Korean companies concerned to the Community, plus an amount for selling, general and administrative costs ("SG&A") and profit realised for the like product on the domestic market. The constructed normal values established were therefore fully comparable to those of the Chinese producers.

The same Chinese producer also claimed that the SG&A costs incurred for sales of the like product on the domestic market in Korea were inflated, given this market's inefficient distribution system.

In fact, the amount of SG&A costs attributed was far below that which the Chinese producer concerned alleged had been used in constructing normal value.. The amount of SG&A costs used is in line with the Chinese producer's estimate.

(11.) In these circumstances, it is considered that none of the comments received after the imposition of provisional measures require the choice of an analogue country other than Korea, or a change in the methodology used for determining the normal values for the Chinese producers. Consequently, the approach followed at the provisional stage with regard to the determination of normal values concerning China is maintained.

3. Export price:

(12.) In establishing the export price all export transactions during the investigation period reported by Chinese producers were used.
Account was taken of ~~the fact that~~ no price for the Chinese MWOs sold directly for export to the Community from the country of origin was found to exist as all export sales were made through related selling organisations located in Hong Kong. Therefore the export price had to be adjusted on the basis of the price at which the product concerned was resold by the Hong Kong based selling companies to independent customers located in the Community. Contrary to the approach taken at the provisional stage, at which a flat rate of 5% was applied to reflect the costs incurred and profit realised by the exporters concerned for their export activity, at the definitive stage due allowance was only made for the direct costs actually incurred by the Hong Kong sales companies.

4. Comparison:

(13.) As at the provisional stage, all adjustments relating to differences in normal value affecting price comparability claimed by the Korean producers concerned, which proved to be justified and significant in accordance with Article 2 (10) (c) of the basic anti-dumping Regulation, were also applied in comparing normal value and export price for Chinese producers. Such adjustments were made in particular in respect of physical differences, differences relating to import charges and indirect taxes, differences in the level of trade and to differences in direct selling expenses as discussed in recital (20) below.

Normal value established in the analogue country on an ex-frontier level was compared with the export price at the Chinese ex-frontier level on a transaction-by-transaction basis.

5. Dumping margin:

(14.) The assessment of the information received from the Chinese producers concerned with respect to export prices and taking into account the normal value as established above shows the existence of dumping in respect of imports of MWOs originating in China taken as a whole.

Unlike at the provisional stage, the two Chinese producers claimed individual treatment at the definitive stage.

However, one company did not submit any new arguments after the imposition of provisional measures relating to the direct and indirect, contractual and factual involvement of Chinese public authorities in the operation of the company.

The other company newly submitted information related to its operation in China which also indicates that the company does not operate in a way that would justify the granting of individual treatment.

Indeed, both producers in China are joint-venture companies whose joint venture partners are non-Chinese as well as Chinese companies. From the joint-venture contracts, it appears that the producing companies are still partly controlled in their operations by the Chinese partners and are not entirely free to determine the destination of their sales.

These case specific grounds are in themselves sufficient to reject the claims for individual treatment without having to examine further whether there has been a change in the involvement of the State in, or the influence of the State on, economic activity in China as described, in particular, in recital (19) of Council Regulation (EEC) No 2474/93[10] on the basis of which individual treatment could not, at that time, be granted.

(15.) In conclusion concerning Chinese imports, the weighted average dumping margin found, expressed as a percentage of the net free-at-Community-frontier price was determined at the definitive stage to be 12.1%.

B. Korea:

1. Normal value:

a) Ordinary course of trade of domestic sales:

(1) Total sales:

(16.) Two companies requested that normal value be established on the basis of all their sales on the domestic market. These companies considered this approach to yield a more representative result as compared to the one taken at the provisional stage in which the analysis was limited to approximately 85% of domestic sales.

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10 OJ L 228/1, 9.9.93

On the basis of the above request, at the definitive stage the assessment of whether domestic sales were made in the ordinary course of trade took into account all sales of these companies.

(2) Profitable sales:

(17.) Based on the total domestic sales transactions as determined above, and using the costs of production data submitted by the three Korean producers which had made representative sales, the profitability of these transactions was analysed.

Where the companies concerned had reported incomplete information with respect to costs of production, where they had used allocation methods yielding unrepresentative results or where the allocation methods used were not supported by the internal accounts of the companies concerned, the costs of production were adjusted accordingly. Such adjustments concerned in particular the financing costs of three companies and the SG&A costs incurred for domestic sales of three companies.

In accordance with Article 2 (11) of the basic anti-dumping Regulation, allocations of indirect costs after the above mentioned adjustments were made on the basis of turnover.

It was concluded at the definitive stage after taking into account the above mentioned adjustments that all three Korean producers concerned had made profitable sales on the domestic market, i.e. that these companies had made sales in the ordinary course of trade.

The same methodology described in recital (21) of the provisional duty Regulation and used at the provisional stage to assess the profitability by MWO model was used at the definitive stage.

b) Model comparison and normal value determination:

(18.) As far as model comparisons are concerned, the provisional conclusions reached in recital (23) to (25) of the provisional duty Regulation that the great majority of domestically sold models are not comparable to those exported were maintained. Consequently, normal values had to be constructed for the great majority of exported models using the companies' specific cost of production information and profit rates as determined for their sales in the ordinary course of trade.

In the few cases where domestically sold models were comparable with exported models, normal value was established on domestic sales prices.

For the fourth producer located in Korea, which had not made any domestic sales, normal value was constructed using the methodology described in recital (19) of the provisional duty Regulation.

2. Export price:

(19.) As for the domestic sales, also export sales prices were established on the total sales volume, where requested, at the definitive stage. Otherwise the same methodologies as the ones used at the provisional stage and described in recitals (26) to (29) of the provisional duty Regulation were used at the definitive stage in order to establish export prices.

3. Comparison:

(20.) At the definitive stage, normal value by model, as determined above, was compared at an ex-factory level with the ex-factory export price on a transaction-by-transaction basis.

For the purpose of a fair comparison, due allowance in the form of adjustments was made for differences affecting price comparability. Those allowances which were claimed and which proved to be significant were granted where justified in accordance with Article 2 (9) and (10) of the basic anti-dumping Regulation. Based on the analysis conducted after the imposition of provisional measures, adjustments were made in respect of physical differences, differences relating to import charges and indirect taxes, selling expenses and, in addition, with respect to differences in the level of trade, in particular as regards sales to original equipment manufacturers ("OEM").

As far as differences in selling expenses in the form of credit costs for differences in payment terms are concerned, the general approach taken at the provisional stage is maintained. This approach allowed for the granting of an allowance for differences in payment terms if it was demonstrated by the parties concerned that these differences affect price comparability. In this context it was considered that payment terms can affect prices paid by a customer only where the payment terms are agreed at the date of sale, i.e. the date of the conclusion of the sales contract or the date of the invoice at the latest. It is only in such circumstances that the cost of credit associated with the payment terms can be considered to have influenced the buyer's decision.

As far as export sales to OEM-customers are concerned, allowances were granted in cases in which these customers performed functions different from customers on the domestic market resulting in consistently different export price patterns for such customers.

Furthermore, two Korean producers had submitted information on the organisation of their export sales that did not reflect the actual export organisation. These producers had incorrectly described the role of related companies in the Community involved in the export transactions and not submitted information on the related costs of these related companies reflecting their role.

In these circumstances the directly related costs involved had to be determined on the basis of Article 7 (7) (b) of the basic anti-dumping Regulation. This determination was based on general experience related to costs incurred by economic operators assuming such functions.

4. Dumping margin:

(21.) The assessment of the information received from the producers concerned at the definitive stage with respect to export prices and taking into account the normal value as established above shows the existence of dumping in respect of imports of the product concerned originating in Korea also at the definitive stage.

The weighted average dumping margins definitively established for each producer and expressed as a percentage of the total CIF Community- frontier value of imports are as follows:

- Daewoo	9.4 %
- LG Electronics	18.8 %
- Korea Nisshin	24.4 %
- Samsung Korea	3.3 %

As at the provisional stage and for the reasons set out in recital (35) of the provisional duty Regulation the dumping margins of the cooperating company with the highest margin, i.e. 24.4 %, should apply to all non-cooperating producers.

C. Malaysia:

1. Normal value:

(22.) No changes with regard to the overall methodology described in recitals (36) and (37) of the provisional duty Regulation were deemed to be necessary at the definitive stage for the determination of normal value in the light of the comments received.

However, since certain changes were made with respect to the amounts of SG&A and profit realised by Korean producers and since these items were used in constructing normal value for the Malaysian producer, the constructed normal values applied to the Malaysian producer have also changed.

2. Export price:

(23.) No new arguments were raised in respect to the determination of the export price. The approach followed at the provisional stage is therefore maintained at the definitive stage.

3. Comparison:

(24.) As for the determination of the normal values mentioned above, changes were also made with respect to certain allowances granted following changes in the amounts of these allowances for the Korean producers. Consequently, the total allowances granted in order to reflect differences affecting price comparability relating to selling expenses were changed accordingly.

4. Dumping margin:

(25.) Applying the same methodology as explained in the provisional duty Regulation, the weighted average dumping margin established at the definitive stage for the sole cooperating Malaysian producer and expressed as a percentage of the total CIF Community- frontier value of imports is as follows:

Samsung Malaysia	29.0%

As this producer was the only one which cooperated in the present investigation and as it appears from Community import statistics that no other producer made any MWO-exports during the investigation period, it is considered appropriate to apply the above dumping rate to all MWO imports originating in Malaysia.

D. Thailand:

1. Normal value and export price:

(26.) The cooperating Thai producer requested that the normal value for Thailand be established on the basis of sales made by this producer's related company on the Japanese market. The Thai producer in particular claimed that this was in line with the provisions of Article 2 (6) of the basic anti-dumping Regulation, as exports to the Community of MWOs produced in Thailand were actually shipped from Japan. In investigating this request, it was established that the producer's related company in Japan merely issued the invoices for export sales while the MWOs concerned were produced in Thailand and physically shipped directly from Thailand to export markets. Moreover, the information submitted by the Thai producer on its sales activity on the Japanese market turned out to be unreliable.

In these circumstances, it is considered reasonable to maintain, as in the case of Malaysia, the general methodology for determining normal value for Thailand as outlined in recitals (46) and (47) of the provisional duty Regulation.

As for Malaysia, certain changes in the profitability and SG&A costs of the Korean companies having profitable sales on the Korean market, led to a change in the average SG&A rate and the average profit rate used for constructing the normal values for the Thai producer.

2. Comparison:

(27.) As in the case of Malaysia, the changes in the total allowances granted to the Korean producers concerned and deducted from normal value were also taken into account in comparing normal value and export prices for the Thai producer. In particular, an allowance was also granted for sales made at a different level of trade.

3. Dumping margin:

(28.) Applying the same methodology as explained in the provisional duty Regulation, the weighted average dumping margin established at the definitive stage for the co-operating Thai producer and expressed as a percentage of the total CIF Community- frontier value of imports is as follows:

Acme	14.1%

For the reasons set out at the provisional stage which were not contested by any party, the dumping margin for the non-cooperating Thai producer(s)/exporter(s) is based on the highest weighted average dumping margin determined with regard to an individual MWO-segment for which the co-operating Thai producer made significant export sales to the Community.

(29.) On this basis, the dumping margin established for all other exporters from Thailand expressed as a percentage of the total CIF Community-frontier value of imports is 27.3.%.

V. DEFINITION OF COMMUNITY INDUSTRY:

(30.) In its provisional determination, the Commission had established that a variety of producers operated on the Community market.
In accordance with the provisions of Article 4 (5) of the basic anti-dumping Regulation, it was concluded that certain producers related to the exporters should be excluded from the definition of the Community production. On this basis, it was further concluded that the complaining companies represented a major proportion of the remaining Community production. The resulting injury assessment was consequently limited to the situation of the complaining producers.

(31.) One MWO producer located in the Community after its enlargement at 1 January 1995 ("the enlarged Community") claimed that, for the purpose of the injury analysis, the term Community industry should be interpreted as including not only the complaining companies but all Community producers.
Moreover, the company argued that producers from the new Member States should also be included in the definition of the Community industry for the purpose of this proceeding.

In this regard, the complainant has submitted that the inclusion of producers located in new Member States should not be considered, given that these Member States were not part of the Community during the investigation period. Furthermore, it was argued that the producer concerned was directly related to one of the exporters subject to the investigation. The complainant has concluded that this company was shielded from the injurious effects of dumping and should on this ground alone be excluded from the definition of the Community industry.

(32.) In respect of the above mentioned arguments the following is noted:

-- in accordance with Article 4(5) of the basic anti-dumping Regulation the term "Community industry" is defined as including either the producers located in the Community as a whole or those producers whose collective output represents a major proportion of the total Community production,

-- as outlined in recital (110) of the provisional duty Regulation, the Commission took the view that, with or without considering companies located in new Member States as part of the overall Community industry and taking into account a conservative approach as far as the status of the remaining non-cooperating producers are concerned, the complaining companies represent in either case a major proportion of the total Community production.

In view of the above, the Council confirms that it is not necessary to address the question of whether or not producers located in new Member States should be included into the overall Community production as in the present investigation the complaining producers fulfil in any case the requirements of Article 4 (5) of the basic anti-dumping Regulation and form a major proportion of the total Community production.

(33.) This conclusion is reinforced by the fact that, after the end of the investigation period, another producer located in the Community, which did not initially cooperate in the investigation and which was not considered as part of the complaining producers at the provisional stage, approached the Commission indicating its support for the complaint.

(34.) Consequently, for the remainder of this document, the term "Community industry" refers only to that part represented by the complaining companies.

VI. INJURY:

A. Cumulation of the imports originating in the countries concerned:

(35.) One Chinese producer argued that the imports from the exporting countries concerned by this anti-dumping proceeding should not be cumulated. This producer in particular stressed that imports originating in China were not of the same volume as those from Korea.

As already determined at the provisional stage and as outlined in recitals (66) to (69) of the provisional duty Regulation, it is considered that all criteria on the basis of which the Community Institutions usually decide whether the imports from several exporting countries may be cumulated are met in the present proceeding . It has been established that imports from China followed trends comparable to those of the other exporting countries in that;

- they were made at significant levels during the investigation period,
- they were sold at low prices and
- they were in competition on the Community market with the other imports concerned.

Therefore, the Council confirms that it is justified and necessary to cumulate the imports from the countries concerned for the injury determination.

B. Prices of the dumped imports:

(36.) The investigation conducted after the provisional determination has confirmed that prices of MWOs originating in the countries concerned were significantly below the prices charged by the Community industry during the investigation period. In order to establish the level at which prices of the exporters undercut those of the Community industry, the methodology used for the purposes of the preliminary determination has been adapted, in that it was considered reasonable to take into account the possibility of a difference of level of trade between some of the export sales made to independent customers and those made, on average, by the Community industry.

The revised methodology consisted of comparing the sales prices of all sales of the Community industry to independent customers with sales prices of the producers/exporters concerned to independent customers in the Community; an additional amount representing 10% of the export prices being added to the latter prices, representing an estimate for distribution and marketing costs and for a profit for the independent distributors located in the Community.

(37.) The above approach is considered conservative, given that the adapted export prices have been compared to *all* sales transactions of the Community industry whereas some of these sales by Community industry were made at a level of trade comparable to that of the Community frontier stage. The results of this price comparison showed that for all producers located in the exporting countries concerned substantial price undercutting remained. The weighted average undercutting margin was about 20% for China, between around 12% to 30% for Korea depending on the producers and was around 33% for Malaysia and Thailand.

C. Arguments raised concerning the injurious situation of the Community industry:

(38.) No new arguments were raised relating to the injurious situation of the Community industry after the imposition of provisional measures. Therefore, on the basis of the conclusion reached at the provisional stage in recitals (75) to (84) of the provisional duty Regulation, it was definitively concluded that the Community industry has been suffering material injury within the meaning of Article 4 of the basic anti-dumping Regulation.

VII. CAUSATION:

A. Effect of the dumped imports:

(39.) One Chinese producer, one producer located in the enlarged Community and an importers' association alleged that at the provisional stage the Commission did not establish a causal link between dumped imports from the countries under investigation and the injury caused to the Community industry. According to these parties, the Commission has merely relied on a coincidence between the imports and the deterioration of the situation of the Community industry.

(40.) The complainant has contested these claims and supported the provisional conclusions of the Commission set out in recitals (85) to (95) of the provisional duty Regulation and has contested the influence of any factor other than dumped imports on the injurious situation of the Community industry.

(41.) With regard to the question of the causal link between dumped imports and the injury suffered by the Community industry, the Council notes the following: in the analysis undertaken, the Community Institutions have not merely relied on a coincidence in time of increased low-priced imports and the deterioration of the situation of the Community industry. The impact of the increase in volume and market share of the dumped imports and the amount by which they undercut the prices of the Community industry, with a particular emphasis on the pricing behaviour of the exporters and its consequent effect on the Community market has been examined in concreto.
In this analysis it was established that sales made during the investigation period by the exporters concerned and by the Community industry actually went to the same sales channels and even customers. In the light of this and bearing in mind that customer loyalty is generally not very strongly developed for this type of product - this factor being reflected in a high price elasticity of demand - it was considered that the above claims are unfounded and that it was established that dumped imports have contributed significantly to the injury suffered by the Community industry.

B. Other factors:

1. Imports from other countries:

(42.) One Chinese producer and a producer located in Sweden stated that the loss in market share of one producer of the Community industry in particular was not due to dumped imports but to increased imports from Sweden.

(43.) The Commission had provisionally concluded, as stated in recitals (89) to (90) of the provisional duty Regulation, that an examination of the trend in imports from other countries (i.e. Japan, Sweden, United States and other third countries) showed, overall, a declining tendency. The prices of these imports were found to be substantially higher than those from the countries subject to investigation.

With regard to the above allegation, as stated in the provisional duty Regulation in recital (89) imports from Sweden taken individually increased up to the investigation period to reach a market share of around 8%. However, it was found that the average import prices of these imports were substantially higher than those of the exporting countries concerned by this proceeding and even higher than the average prices of MWOs of the Community industry. Furthermore, the development of the market shares in individual Member States by the Community producer and the Swedish producer has been specifically analysed, based on the information provided by the Chinese producer and the Swedish producer. This analysis shows that there is no consistent correlation between increases in market share in individual Member States for MWOs originating in Sweden and losses in market share for MWOs made by the Community producer and vice versa. Indeed, the two companies concerned have strongholds in entirely different Member States.
In conclusion, it was deemed highly unlikely that the imports from Sweden have had a significant impact on the overall situation of the Community industry except that, if any, resulting from normal competition.

2. Behaviour of the Community industry:

(44.) One Chinese producer, one producer located in the enlarged Community and an importers' association alleged that the difficulties suffered by the Community industry can be reduced to problems encountered by one of the complaining companies. In particular the Chinese producer and the producer located in the enlarged Community have stated that this company has made wrong management decisions in its acquisition of a company located in the Community and in not renewing its model range.

(45.) In addressing the above allegations, which were not supported by any relevant evidence, it is considered of particular importance to stress that the investigation carried out before and after the provisional determination has confirmed that indeed all four individual companies constituting the complaining industry have suffered material injury. The collected and verified information on the state of the Community industry does not contain any indication that the material injury suffered by this industry was due to particularly adverse results by one company only.

(46.) Furthermore, it is noted that the above parties have not submitted any information in support of their claims that would justify a change in the assessment outlined in recital (92) of the provisional duty Regulation, concerning the acquisition policy of one particular complaining producer.

(47.) As far as the policy of model renewal of the complaining producer mentioned in the above claim is concerned, the investigation has shown that, in the three years between 1990 and 1992 leading to the investigation period, the Community producer in question launched new model ranges which during the investigation period were sold in substantial quantities. In any event, as has been stated in recital (82) of the provisional duty Regulation, the Community industry could not implement all its investment plans due to its deteriorating financial situation resulting from the depressed price situation.

(48.) One Chinese producer and one producer located in the enlarged Community also alleged that certain Community producers, by over-investment in an unrealistic level of capacity for MWO production, had suffered self-inflicted injury.

(49.) The evidence relating to the history of investment decisions submitted in the course of the present anti-dumping proceeding by the companies concerned was reviewed in detail. This revealed that the investment decisions concerned were based on independent and reliable forecasts of the size of the Community MWO market and on realistic targets as far as market shares in this market are concerned.

(50.) One Chinese producer, one producer located in the enlarged Community and an importers' association submitted that during the period under consideration for assessing injury, other Community producers, which were not part of the complaining industry, had a positive performance.

(51.) In response to this argument, it should be noted that, as explained in recitals (57) to (64) of the provisional duty Regulation, certain producers operating in the Community which were not excluded from the definition of Community production, and which did not support the complaint, were shielded from the injurious effect of dumped imports by having themselves imported dumped MWOs in substantial quantities. It is considered that any positive performance by such companies cannot constitute proof that dumped imports have not caused injury to the complaining companies.

(52.) For the reasons given in recital (32) above, it was not necessary to determine whether such producers' output constituted Community production for the purposes of determining Community industry, but it should be noted that these companies' positive performance tends to reinforce the conclusion that it is actually necessary to exclude them from the category of Community production for the purposes of an examination of injury. If their data were to be included in the evaluation of the state of the Community industry, this would distort the evaluation of the situation of those companies that did not benefit from dumping and have encountered economic difficulties.

3. Development of the Community MWO market:

(53.) One Chinese producer and the producer located in the enlarged Community have further alleged that the price erosion noticed in the Community MWO market can be explained by factors relating to changes in the distribution of MWOs in general.

Although the above parties have not supported their claim with evidence, it is considered that changes in the distribution system of MWOs might be one reason for a reduction in MWO sales prices. However, it should be emphasised that such developments do not explain the substantial level of price undercutting found between the export prices concerned and prices of the Community industry.

C. Conclusion:

(54.) Based on the above analysis and taking into account the analysis summarised in recitals (85) to (95) of the provisional duty Regulation, the conclusions of which remain unchanged, it is considered that, on balance, it must be concluded that dumped imports have caused material injury to the Community industry.

This conclusion is supported in particular by the findings concerning imports of MWOs made in increasing volumes and at prices substantially undercutting those of the Community industry and the findings that, to a great extent, the sales of the MWOs by both the exporters and the complaining producers were made through the same sales channels and in some cases the same customers.

(55.) This conclusion was reached at the definitive stage even though it cannot be excluded that certain other factors have also contributed to the economic difficulties of the Community industry. It remains the case that the injury caused by the dumped imports, taken in isolation, was material.

VIII. COMMUNITY INTEREST:

(56.) The determination as to whether the Community interest calls for intervention in the present investigation was based on an appreciation of all various interests taken as a whole, including the interest of the domestic industry and users and consumers. In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition was given special consideration.

(57.) After the imposition of provisional measures, one Chinese producer and one producer located in the enlarged Community stated that the imposition of definitive anti-dumping measures in this case would not be in the Community interest as such measures would result in an increase of sales prices to the end customers. In response to this argument, it is considered that while it is the purpose of any anti-dumping measure that the prices for imports originating in the countries concerned are increased to a non-dumped or at least non-injurious level, it is also considered that, given the number of suppliers operating in this market, and given the purchasing power of the distribution channels in the Community, the overall price increase in the market will be limited as the market will continue to operate in a competitive environment. This conclusion is reached taking into account that, by the imposition of definitive anti-dumping measures, the Community industry will be allowed to operate under effective conditions of competition, ensuring this industry's presence on the Community market in the future.

(58.) Furthermore, the producer located in the enlarged Community argued that the imposition of anti-dumping measures would deprive it of the opportunity to pursue a global production and marketing strategy as it would be forced to operate separately in each region of the world. This in turn would lead to inefficiencies and ultimately to a worsening of the situation of its Community based production.

As far as the above argument is concerned, it should be pointed out that anti-dumping measures, *per se*, do not affect the globalisation strategies of companies, unless such strategies rely on sourcing products at dumped prices. In such cases, where dumping has caused injury to a Community industry, the companies in question would, to the detriment of other producing companies in the Community, in the absence of corrective measures eliminating injurious dumping, benefit from an unfair competitive advantage beyond any normal and fair advantage that globalisation might bring.

(59.) In conclusion, and taking into account the analysis outlined in recitals (96) to (102) of the provisional duty Regulation, it is considered that, on balance, it is in the general interest of the Community to impose anti-dumping measures concerning imports of MWOs originating in China, Korea, Thailand and Malaysia. Indeed, no compelling reason not to impose anti-dumping measures in this case has been identified.

IX. UNDERTAKING:

(60.) The Commission has received an offer of an undertaking from one Chinese producer pursuant to Article 10 (2) of the basic anti-dumping Regulation. This offer has been examined carefully. In particular, attention has been paid as to whether the minimum prices offered in the undertaking are such that the Commission can be satisfied that the injurious effect of the dumping determined would be eliminated, as specifically required by Article 10 (2) (b) of the basic anti-dumping Regulation.
Furthermore, the Commission has assessed whether it would be feasible to monitor the undertaking proposed.

(61.) As far as the level of the prices offered is concerned and on the basis of the investigation conducted, it has been determined that the price levels proposed would lead to a dumping margin even higher than the one determined for the investigation period. In any event, it should be noted that the acceptance of undertakings for consumer products has historically been exceptional given, *inter alia*, the complexity of the models, the number of different types and the variety and the regularity with which they are upgraded or otherwise modified. All these considerations tend to lead to virtually insurmountable difficulties in monitoring. These general considerations also apply to the present case.

(62.) It was therefore considered by the Commission, after consultation, that the acceptance of an undertaking was not appropriate in this particular proceeding and the offer concerned has accordingly been rejected. The Commission has informed the exporter concerned accordingly.

X. DUTY:

(63.) For the purpose of establishing the level of the definitive duty, the same methodology already applied at the provisional stage and outlined in recitals (103) to (108) was used taking account of the dumping margins definitively determined and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

Since it was confirmed at the definitive stage that the injury consists principally of price undercutting, price depression and, as a consequence, slightly decreasing market shares and substantial financial losses, the removal of such injury requires that the industry should be put in a position where prices can be increased to profitable levels without a continued loss of market share.

For calculating the necessary price increase, it was considered that the actual prices of these imports adjusted using the same methodology as mentioned in recitals (35) and (36) had to be compared to selling prices that reflect the costs of production of the complaining producers plus a reasonable amount of profit.

(64.) To this end, the costs of manufacturing of the complaining producers were increased by the SG&A costs and an amount of profit, i.e. a margin of 5% on turnover, which was considered to provide the minimum required to ensure the viability of the Community industry.

The actual weighted average selling prices charged during the investigation period by the Community industry were compared to the values constructed as explained above, and increased, if appropriate, in order to achieve the overall minimum amount of profit required. The resultant prices thus established were compared with the average prices of the dumped imports used to establish price undercutting.

The differences between these two prices expressed on a weighted average basis and as a percentage of the free-at-Community-frontier price ranged from around 50% for China for which a single margin was established, between 35% and 60% for Korea depending on the exporters concerned and around 80% for Malaysia and Thailand.

(65.) Based on the above, definitive anti-dumping duties, expressed as a percentage of the free-at-Community-frontier price before CCT duty, should, in accordance with Article 13 (3) of the basic anti-dumping Regulation be imposed at the level of the dumping margins found, the dumping margins all being lower than the above levels of injury. Definitive duties should therefore be as follows :

China :	- all imports	12.1 %
Korea :	- Daewoo	9.4 %
	- LG Electronics	18.8 %
	- Korea Nisshin	24.4 %
	- Samsung Korea	3.3 %
	- any other imports	24.4 %
Malaysia :	- all imports	29.0 %
Thailand :	- Acme	14.1 %
	- any other imports	27.3 %

XI. COLLECTION OF THE PROVISIONAL DUTIES:

(66.) In view of the magnitude of the dumping margins found for the majority of exporting producers and in light of the seriousness of the injury, in particular in light of the level of price undercutting and price underselling, it is considered necessary that amounts secured by way of provisional anti-dumping duties should be definitively collected for all companies at the level of the definitive duties,

HAS ADOPTED THIS REGULATION :

Article 1

1. Definitive anti-dumping duties are hereby imposed on imports of microwave ovens falling within CN code 85 16 50 00 and originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand.

2. The rate of the anti-dumping duties applicable to the net, free-at-Community-frontier price, before CCT-duty, shall be as follows :

Country	Products manufactured by	Rate of duty %	Taric additional code
People's Republic of China :		12.1 %	-
Republic of Korea :	- Daewoo Electronics Co. Ltd.	9.4 %	8829
	- LG Electronics Inc.	18.8 %	8830
	- Korea Nisshin Co. Ltd	24.4 %	8831
	- Samsung Electronics Co. Ltd	3.3 %	8832
	- other companies	24.4 %	8833
Malaysia :		29.0 %	-
Thailand :	- Acme Industry Co. Ltd	14.1 %	8836
	- other companies	27.3%	8837

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

Article 2

The amounts secured by way of provisional anti-dumping duty under Regulation No. 1645/95 shall be definitively collected at the duty rate definitively imposed. Amounts secured in excess of the definitive rate of anti-dumping duty shall be released.

Article 3

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

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

Done at Brussels,

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