I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2860/93

of 18 October 1993

amending Regulation (EEC) No 577/91 imposing a definitive anti-dumping duty on imports of certain types of electronic microcircuits known as Eproms (erasable programmable read-only memories) originating in Japan

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Article 14 thereof,

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

Whereas :

I. Previous investigation

(1) The Council by Regulation (EEC) No 577/91 [2], imposed a definitive anti-dumping duty on imports of certain types of electronic microcircuits known as Eproms (erasable programmable read-only memories) originating in Japan. As a result of the amendments made to the combined nomenclature by Commission Regulation (EEC) No 2587/91 [3], the imports now fall within CN codes 8542 11 42, 8542 11 44, 8542 11 46 and 8542 11 48 for finished Eproms, within CN code ex 8542 11 59 for finished OTPs, within CN code ex 8542 11 01 for wafers for all types of Eproms and within CN code ex 8542 11 05 for dice or chips for all types of Eproms. The Commission, by Decision 91/131/EEC [4], accepted undertakings offered by certain Japanese producing companies in connection with the anti-dumping proceeding.

II. Review investigation

(2) In July 1992, the Commission, in accordance with Article 14 of Regulation (EEC) No 2423/88, initiated [5] a partial review of Regulation (EEC) No 577/91 with regard to Eproms produced in Japan by Nippon Steel Semiconductor (NPNX) and exported by Intel Corporation (Intel), imports of which are currently subject to the definitive anti-dumping duty.

Intel initially concluded its subcontracting agreement with NMB Semiconductor Co. Ltd, but this company was renamed NPNX after it was taken over by Nippon Steel Corporation, Tokyo, Japan, in March 1993. The agreement with Intel has not been altered by these changes.

(3) On the basis of the findings of the partial review, the Commission has accepted an undertaking offered by Intel by Decision 93/538/EEC [6].

III. Amendment of the reviewed measures

(4) In view of Commission Decision 93/538/EEC, Regulation (EEC) No 577/91 should be amended in order to exempt Eproms produced in the framework of the agreement between Intel and NPNX and subsequently exported by Intel from the definitive duty.

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[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 65, 12. 3. 1991, p. 1.
[3] OJ No L 259, 16. 9. 1991, p. 1.
[4] OJ No L 65, 12. 3. 1991, p. 42.
[5] OJ No C 181, 17. 7. 1992, p. 7.
[6] See page 64 of this Official Journal.

(5) After the adoption of Regulation (EEC) No 577/91, several Japanese producers from which undertakings had been accepted contacted the Commission and requested that the names of some of their affiliated companies which had not been involved in Eprom exports to the Community when Regulation (EEC) No 577/91 was published should be added to the list in Annex I to that Regulation, since Eproms would be exported to the Community by those companies in the future.

(6) The Commission considers the request justified and the Council confirms this view. Therefore, the list in the said Annex should be amended.

(7) Since the present review relates only to the circumstances of certain specific companies, the measures contained in Regulation (EEC) No 577/91 are not being modified or confirmed within the meaning of Article 15 (1) of Regulation (EEC) No 2423/88, and consequently the date on which they are due to expire pursuant to that provision remains unchanged,

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) No 577/91 is hereby amended as follows :

1. the first indent of Article 1 (4) shall be replaced by the following :

'— they are produced and exported to the Community by the following companies, whose undertakings have been accepted pursuant to Article 1 of Decision 91/131/EEC or to Article 1 of Commission Decision 93/538/EEC (*) :

— Fujitsu Ltd,

— Hitachi Ltd,

— Intel Corporation,

— Mitsubishi Electric Corp,

— NEC Corp,

— Sharp Corp,

— Texas Instruments (Japan) Ltd and

— Toshiba Corporation, or that ;

(*) OJ No L 262, 21. 10. 1993, p. 64.' ;

2. the third indent of Article 1 (4) shall be replaced by the following :

'— they are produced, and sold for export to the Community, by one of the companies listed in the first indent : in this case, exemption from the duty shall be conditional upon presentation to the customs authorities of documentation from the producer confirming that it sold the products for which the exemption is sought for export to the Community ; the documentation (the format of which is contained in Annex III) must contain a clear description of the device type(s) sold, the total quantity per device type, the unit price per device type, or a statement that the price was not lower than the applicable reference price, the invoice number and the confirmation that these products were produced and sold for export to the Community by the said company under the undertakings referred to in Article 1 of Decision 91/131/EEC or in Article 1 of Decision 93/538/EEC, or that the following conditions are fulfilled :' ;

3. Annex I shall be amended as follows :

(a) the names cited below shall be added to the lists of companies, being companies affiliated respectively to :

— Fujitsu Ltd, Japan :

'— Fujitsu Devices Inc, Japan',

— Hitachi Ltd, Japan :

'— Hitachi Asia (Malaysia) Sdn Bhd, Malaysia,

— Hitachi Asia Pte Ltd, Singapore, Indonesia, Taiwan,

— Hitachi Asia (Hong Kong) Ltd, Hong Kong, South Korea, China,

— Hitachi Asia (Thailand) Co Ltd, Thailand.',

— Sharp Corporation, Japan :

'— Sharp Electronic Components (Taiwan) Corporation, Taiwan,

— Sharp Technology (Taiwan) Corporation, Taiwan,

— Sharp Electronics (Taiwan) Co. Ltd, Taiwan.' ;

(b) the list of companies affiliated to NEC Corporation shall be replaced by the following :

'— NEC Electronics Inc, USA,

— NEC Electronics Singapore Pte Ltd, Singapore,

— NEC Electronics Hong Kong Limited, Hong Kong,

— NEC Australia Pte Ltd, Australia,

— NEC Semiconductors (Malaysia) Sdn Berhad, Malaysia,

— NEC Electronics Taiwan Ltd, Taiwan.' ;

(c) the names cited below shall be deleted from the lists of companies, being companies affiliated respectively to :

— Hitachi Ltd, Japan :

'— Hitachi Asia Pte Ltd, Singapore, Malaysia, Indonesia,

— Hitachi Asia (Hong Kong) Ltd, Hong Kong, South Korea, China, Taiwan.'

— Sharp Corporation, Japan :

'— Sharp Electronics Co Ltd Taiwan.' ;

(d) the following list of companies shall be added :

'Companies affiliated to Intel Corp, USA :

— Intel Corporation (USA, Delaware),

— Intel Electronics, Ltd (Israel),

— Intel Japan KK (Japan),

— Intel Technology Sdn Bhd (Malaysia),

— Intel Philippines (Philippines),

— Intel Philippines Mfg Inc (Philippines),

— Intel Puerto Rico, Inc (USA, California)' ;

4. the first table in Annex II shall be replaced by the following :

'Additional codes	Firms/rate
8491	— Fujitsu Ltd, — Hitachi Ltd, — Intel Corporation, USA, — Mitsubishi Electric Corp, — NEC Corp, — Sharp Corp, — Texas Instruments (Japan) Ltd and — Toshiba Corporation No anti-dumping duty (1)
8492	Other : 94 %

(1) Also included here are the affiliated companies mentioned in Annex I and other companies complying with the conditions in the third indent of Article 1 (4) of the Regulation.'

Article 2

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 Luxembourg, 18 October 1993.

For the Council

The President

A. BOURGEOIS