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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2537/1999

of 29 November 1999

amending Regulations (EEC) No 2861/93, (EC) No 2199/94, (EC) No 663/96 and (EC) No 1821/98 concerning the imposition of definitive anti-dumping duties on imports of certain magnetic disks (3,5″ microdisks) originating in Japan, Taiwan, the People's Republic of China, Hong Kong, the Republic of Korea, Malaysia, Mexico, the United States of America and Indonesia and Regulation (EC) No 1335/1999 reimposing a definitive anti-dumping duty on imports of certain magnetic disks (3,5″ microdisks) originating in Indonesia and produced and sold for export to the Community by PT Betadiskindo Binatama

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([1]), and in particular Article 11(3) thereof,

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

Whereas:

(A) REQUEST FOR A REVIEW

(1) A request for an interim review of Regulation (EEC) No 2861/93 ([2]) by which the Council imposed definitive anti-dumping duties on imports of certain magnetic disks (3,5″ microdisks) originating, *inter alia*, in Japan was received from Sony Corporation and Fuji Photo Film Co. Ltd, both located in Japan and hereinafter referred to as 'Sony' and 'Fuji Film' respectively.

(2) This request pursuant to Article 11(3) of Regulation (EC) No 384/96 claimed a change in circumstances regarding the definition of the product concerned by the proceeding in question to justify the initiation of a review. According to the request, conventional 3,5″ microdisks with a storage capacity of 1,44 megabytes and new generation 3,5″ microdisks with a storage capacity of 200 megabytes could not be considered to form a single product and should therefore be excluded from the scope of the existing anti-dumping measures.

(3) As the request contained sufficient prima facie evidence, the Commission decided to initiate an interim review ([3]) of Regulation (EEC) No 2861/93. At the same time, the Commission considered that its examination should encompass all other existing measures imposed on the same product, and accordingly decided to extend the review to also cover the measures applicable to imports originating in Hong Kong, the Republic of Korea, Malaysia, Mexico, the United States of America and Indonesia.

(4) This interim review was limited to clarification of the product scope of the regulations imposing the measures.

(B) EXISTING MEASURES

(5) The measures currently in force are definitive anti-dumping duties in the form of *ad valorem* duties imposed on certain magnetic disks (3,5″ microdisks) by the following regulations:

— Regulation (EEC) No 2861/93 imposing a definitive anti-dumping duty on imports of certain magnetic disks (3,5″ microdisks) originating in Japan, Taiwan and the People's Republic of China,

— Regulation (EC) No 2199/94 ([4]) imposing a definitive anti-dumping duty on imports of certain magnetic disks (3,5″ microdisks) originating in Hong Kong and the Republic of Korea,

— Regulation (EC) No 663/96 ([5]) imposing a definitive anti-dumping duty on imports of certain magnetic disks (3,5″ microdisks) originating in Malaysia, Mexico and the United States of America,

— Regulation (EC) No 1821/98 ([6]) imposing a definitive anti-dumping duty on imports of certain magnetic disks (3,5″ microdisks) originating in Indonesia,

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).
([2]) OJ L 262, 21.10.1993, p. 4.
([3]) OJ C 394, 17.12.1998, p. 21.
([4]) OJ L 236, 10.9.1994, p. 2.
([5]) OJ L 92, 13.4.1996, p. 1.
([6]) OJ L 236, 22.8.1998, p. 1. Regulation as amended by Commission Regulation (EC) No 2152/98 (OJ L 271, 8.10.1998, p. 9).

— Regulation (EC) No 1335/1999 reimposing a definitive anti-dumping duty on imports of certain magnetic disks (3,5″ microdisks) originating in Indonesia and produced and sold for export to the Community by BT Betadiskindo Binatama [1] (which resulted from a newcomer review relating to that company).

(C) PROCEDURE

(6) The Commission gave the parties known to be concerned the opportunity to make their views known in writing and to request a hearing.

(7) The Community industry, represented by the Committee of European Diskette Manufacturers (Diskma) on behalf of producers whose collective output of 3,5″ microdisks represented a major proportion of Community production of these microdisks, made its views known in writing.

(8) The applicants for the review (Sony and Fuji Film) requested and were granted hearings. Another exporting producer of high capacity microdisks in Japan, Hitachi Maxell Ltd (hereinafter referred to as 'Hitachi Maxell'), also made an application to have a product manufactured by it excluded from the scope of the measures.

(9) One American exporting producer, Imation Europe BV (hereinafter referred to as 'Imation', which opposed the exclusion of products from the scope of the anti-dumping measures, requested and was granted a hearing.

(10) Submissions were also received from the Hong Kong Economic and Trade Office (an exporting country authority) and Memtek Europe Ltd which is part of the Hanny Group of companies, a company based in Hong Kong with production in the People's Republic of China, (hereinafter referred to as 'Hanny').

(D) PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(11) The product concerned by all of the Regulations is certain magnetic disks (3,5″ microdisks) used to record and store encoded digital information falling within CN code ex 8523 20 90.

In the course of the investigation which led to the adoption of the measures against Japan, Taiwan and the People's Republic of China, the question of whether the anti-dumping measures should also apply to higher storage capacity 3,5″ microdisks was examined. As stated in recital 9 of Commission Regulation (EEC) No 920/93 [2] imposing provisional measures, one Japanese producer requested that 3,5″ microdisks with a storage capacity of four megabytes and above should be excluded from the scope of the proceeding, but this request was rejected on the grounds that, at the time of the adoption of Regulation (EEC) No 920/93:

— despite some alleged differences in the technology used for the manufacture of both four megabyte and higher capacity 3,5″ microdisks and other 3,5″ microdisks, their basic physical characteristics and end uses were the same, and

— all 3,5″ microdisks were to a large extent, interchangeable.

As a result, all 3,5″ microdisks, irrespective of their storage capacity, were considered to be a single product and to be covered by the duties in force.

These findings were confirmed by the Council in Regulation (EEC) No 2861/93.

(E) ARGUMENTS PRESENTED FOR EXCLUDING PRODUCTS FROM THE SCOPE OF THE EXISTING MEASURES

1. Submission from Sony, Fuji Film and Hitachi Maxell

(12) Sony and Fuji Film presented evidence that 3,5″ microdisks with a storage capacity of 200 megabytes, known as 'HiFDs', have been developed in a joint venture. According to the two companies, HiFDs should be excluded from the scope of the measures on the grounds that their physical characteristics and end uses are so markedly different from the 3,5″ microdisks covered by the investigation that they cannot be considered a single product together with other 3,5″ microdisks.

(13) Similarly, Hitachi Maxell presented evidence that 3,5″ microdisks with a storage capacity of 120 megabytes, known as the 'Superdisk LS-120', have also been developed. According to the company, the Superdisk LS-120 should also be excluded from the scope of the measures on the same grounds as for HiFDs.

Physical characteristics

(14) According to these companies, the HiFD and Superdisks LS-120 microdisks, while sharing the convention 3,5″ microdisks form, have the following characteristics.

(i) *Track densities and coding schemes*: They have 200 MB or 120 MB storage capacity respectively, giving 130 or 83 times the capacity of a convention 3,5″ microdisk. This greater capacity is achieved through enhancing the track density and linear recording density together with more effective data coding schemes.

[1] OJ L 159, 25.6.1999, p. 14.
[2] OJ L 95, 21.4.1993, p. 5.

(ii) *Tracking technology*: They have 3 450 or 2 490 tracks per inch (TPI) respectively, compared to 135 TPI for conventional 3,5″ microdisks. This higher density is achieved through the use of 'magnetic sector servo tracking' technology (in the case of HiFDs), or 'optically continuous servo tracking' technology (in the case of Superdisks LS-120s) to read from and write to the microdisks, which respectively automatically lead the reader head, either magnetically or optically, to the targeted track. In the case of conventional 3,5″ microdisks, the position of the head of the drive is set mechanically. Consequently, the HiFD and Superdisk LS-120 drive units also utilise an entirely new type of magnetic head to that used in conventional 3,5″ microdisks.

(iii) *Particle media*: They have greated magnetic coercivity and a thinner magnetic layer than that of conventional 3,5″ microdisks.

(iv) *Compatibility*: They cannot be read by a conventional 3,5″ microdisk drive. They have identification and recognition holes that are absent from conventional microdisks and can only be used to full capacity when inserted into a HiFD or Superdisk LS-120 drive unit respectively. However, both HiFD and Superdisk LS-120 drive units are backwardly compatible with conventional 3,5″ microdisks since they can read from and write to conventional microdisks. Such conventional 3,5″ microdisks do not, however, gain the storage capacity of HiFD microdisks or Superdisk LS-120s when written to by a HiFD or Superdisk LS-120 drive unit respectively.

(v) *Data transfer*: They can be rotated at speeds of 3 600 rpm or 720 rpm, respectively, in their drives whereas a conventional 3,5″ microdisk is rotated at 300 rpm. This allows a data transfer rate of 3 600 or 680 kilobytes per second, respectively, compared to a performance of 60 kilobytes per second for conventional 3,5″ microdisks.

End uses

(15) The companies concerned claimed that the end uses of the HiFDs and Superdisk LS-120s are fundamentally different from those of conventional 3,5″ microdisks. Typically, they are used for the larger storage files such as those created by audio, video, graphics and multimedia programs which require the higher capacities and faster transfer rate provided by both high storage capacity 3,5″ microdisks. These uses are far beyond the capability of conventional 3,5″ microdisks, which are typically used for smaller working files and are therefore not interchangeable with the HiFD or Superdisk LS-120.

Pricing

(16) According to the applicant companies, the differences in physical characteristics between HiFDs and Superdisk LS-120s, on the one hand, and conventional 3,5″ microdisks on the other, are reflected in their respective manufacturing costs and retail prices. The differences between 3,5″ microdisks and HiFDs or Superdisk LS-120s are underlined by the price differential that exists between them. Indeed, this differential is such that competition between 3,5″ microdisks and HiFDs or Superdisk LS-120s does not exist at any practical level.

2. **Other submissions**

(17) Submissions were received from the Hong Kong Economic and Trade Office and from Hanny, which, although a producer of 3,5″ microdisks, is not a producer of higher-capacity 3,5″ microdisks. Both submissions argued that the higher-capacity 3,5″ microdisks are not a like product with conventional 3,5″ microdisks, and should therefore be excluded.

(F) **ARGUMENTS FOR NOT EXCLUDING PRODUCTS FROM THE SCOPE OF THE EXISTING MEASURES — SUBMISSION BY IMATION**

(18) A submission was also presented by Imation which is a subsidiary of an American-based company producing the Superdisks LS-120 in the United States of America for sale on the Community market. Imation cooperated with the previous investigation which led to the imposition of anti-dumping duties on imports from the United States of America, and has a company-specific zero anti-dumping duty rate.

1. **Physical characteristics**

(19) According to Imation, the differences in memory capacity, design and reading/writing process technology do not prevent products from belonging to the same single category of product concerned, as long as the basic characteristics and technology do not show significant differences. Both the HiFD and Superdisk LS-120, it is claimed, share the same basic physical, technical and/or chemical characteristics as conventional 3,5″ microdisks.

(20) This submission cited the DRAM regulations extensively (Commission Regulation (EEC) No 165/90 of 23 January 1990 imposing a provisional anti-dumping duty on imports of DRAMs originating in Japan [1]) and Council Regulation (EEC) No 2112/90 of 23 July 1990 imposing a definitive anti-dumping duty on imports of DRAMs originating in Japan [2]). In that case, the Community took the view that the similarities of DRAMs of different densities and processes outweighted their differences in memory capacity, design and process technology.

[1] OJ L 20, 25.1.1990, p. 5.
[2] OJ L 193, 25.7.1990, p. 1. Regulation as last amended by Regulation (EEC) No 2967/92 (OJ L 299, 15.10.1992, p. 4).

(21) Imation argued that the three basic technologies of memory enhancement (particle media, track densities and coding schemes) for 3,5″ microdisks have remained the same for the last 25 years.

In relation to the particle media, it is argued that the many and continuing improvements which have been made to the microdisk in terms of memory and speed are all based on continuing refinements of the two key elements of the size and shape of the magnetic particles in the magnetic layer, and on the thickness of the magnetic layer.

Track densities have been improved through the use of servo tracking technologies.

Methods of coding data have improved through the use of better coding schemes.

The development of high-capacity microdisks was stated to be an old phenomenon, with previous attempts to produce such 3,5″ microdisks. The basic technology used, namely to store data on a magnetic medium, has remained the same for both conventional 3,5″ microdisks and high-capacity microdisks. The size, dimensions, design, architecture and function of conventional 3,5″ microdisks and high-capacity microdisks were identical. It was also argued that the servo tracking technology used in HiFDs has been available to the industry for several years.

It was further argued that differences in construction and appearance were not important; and that the different recognition holes in the higher-capacity 3,5″ microdisks were purely a functional aspect of their construction. The fact that the HiFD and Superdisk LS-120 drives are backwardly compatible and can be used to read from and write to conventional 3,5″ microdisks is taken to be a strong indication that the products, despite improvements in technology, are not substantially different in basic technology and use.

2. **End uses**

(22) As regards end use, Imation stated that the basic use of high-capacity 3,5″ microdisks is to store data in a portable medium as is that of conventional 3,5″ microdisks. Imation contested the view that the end uses differ. The Sony and Fuji Film claim that the differences in physical characteristics between HiFDs and conventional 3,5″ microdisks are reflected in their respective manufacturing and retail prices was also rejected. According to Imation, the retail price per megabyte is almost in a one-to-one relation between HiFDs and 3,5″ microdisks.

(G) **POSITION OF THE COMMUNITY INDUSTRY**

(23) The Community industry, represented by Diskma, does not produce either the HiFD or the Superdisk LS-120 and has indicated that it has no objection to the exclusion of these products from the scope of the definitive anti-dumping Regulations mentioned in recital 5, as long as both are distinguishable from conventional 3,5″ microdisks by the Community customs authorities and as long as their exclusion does not allow evasion of the duties in force.

(H) **FINDINGS OF THE INVESTIGATION**

1. **Dissimilarity of products**

Physical characteristics

(24) As explained above, the storage capacities and track densities of the HiFD and the Superdisk LS-120 are many times those of a conventional 3,5″ microdisks. The magnetic layers are thinner, with higher coercivity than that of conventional 3,5″ microdisks. New coding schemes, as well as technological developments in the drive units for the HiFD and the Superdisk LS-120 allow for data transfer rates between 11 and 60 times those of conventional 3,5″ microdisks.

(25) In addition, the drive units needed to read from and write to these higher-capacity 3,5″ microdisks are quite different from those of conventional 3,5″ microdisks drives. The drive units for conventional 3,5″ microdisks are not compatible with the new higher-capacity microdisks. It is true, that the higher-capacity drives have been designed to be backwardly compatible with conventional 3,5″ microdisks. However, this backwards compatibility relies wholly on the technology of the drive and not on the physical characteristics of the microdisks themselves. This backwards compatibility is achieved by having dual heads, one intended for reading from and writing to higher-capacity microdisks of the relevant type, and the other for reading from and writing to conventional 3,5″ microdisks. Imation's claim that the backward compatibility of the higher-capacity microdisk drives is further evidence of the two types of microdisk being a single product is therefore refuted; the higher-capacity microdisk component of the drive head is not backwardly compatible on its own.

(26) Finally, the investigation has shown that there are currently no 3,5″ microdisks available which would fall between the conventional 3,5″ microdisks and the HiFD and Superdisk LS-120.

End uses

(27) It is acknowledged that, at the most basic level, all types of 3,5″ microdisk are used for the recording of electronic data, even though the HiFD and the Superdisk LS-120 can be used to store electronic files far beyond the capacity of conventional 3,5″ microdisks. Therefore, it is considered that the issue of end uses for conventional 3,5″ microdisks and the HiFD and the Superdisk LS-120 is not sufficient on its own to conclude that conventional 3,5″ microdisks and HiFDs and Superdisk LS-120s are a single product.

2. **Conclusion**

(28) The investigation has shown that a clear dividing line in terms of physical and technical characteristics exists between conventional 3,5″ microdisks and high-capacity microdisks. The product at issue in the review request represents a leap in technology from the microdisks subject to the previous investigations. The physical characteristics of the higher-capacity microdisks, as well as the technology needed to use them, are such as to distinguish them as separate products form conventional 3,5″ microdisks. The fact that the new higher-capacity microdisks look similar to conventional 3,5″ microdisks is not considered to be sufficient reason for maintaining the higher-capacity microdisks within the scope of the Regulations subject to review.

(29) In the light of the foregoing, the Council considers that the exclusion of the HiFD and the Superdisk LS-120 from the scope of the measures imposed by the Regulations subject to review is justified.

(30) The Council therefore concludes that all 3,5″ microdisks with capacities of 120 MB or more and which incorporate either the magnetic sector servo tracking technology of the HiFD, or the optically continuous servo tracking technology of the Superdisk LS-120, should be excluded from the scope of the anti-dumping measures imposed by the Regulations mentioned with effect from the date of publication of the notice of initiation of this review, i.e. 17 December 1998. Interested parties, including the Community industry, were informed of these findings. After being informed of the above facts and conclusions, representatives of Imation made further representations in writing, concerning the exclusion of the HiFD and the Superdisk LS-120 from the scope of the measures imposed by the Regulations subject to review. However, no information or argument was provided which could, on examination, cause the Council to reverse the above conclusions.

(31) Importers of the 3,5″ microdisks which have been excluded from the scope of the anti-dumping measures in question may submit applications to the relevant customs authority for reimbursement of the anti-dumping duties paid from 17 December 1998 to the date of entry into force of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(1) of Regulation (EEC) No 2861/93 shall be replaced by the following:

'1. A definitive anti-dumping duty is hereby imposed on imports of 3,5″ microdisks used to record and store encoded digital computer information falling within CN code ex 8523 20 90 (Taric code 8523 20 90*40) and originating in Japan, Taiwan and the People's Republic of China, with the exception of 3,5″ microdisks based on optically continuous servo tracking technology or magnetic sector servo tracking technology with a storage capacity of 120 MB or more.'

Article 2

Article 1(1) of Regulation (EC) No 2199/94 shall be replaced by the following:

'1. A definitive anti-dumping duty is hereby imposed on imports of 3,5″ microdisks used to record and store encoded digital computer information falling within CN code ex 8523 20 90 (Taric code 8523 20 90*40) and originating in Hong Kong and the Republic of Korea with the exception of 3,5″ microdisks based on optically continuous servo tracking technology or magnetic sector servo tracking technology with a storage capacity of 120 MB or more).'

Article 3

Article 1(1) of Regulation (EC) No 663/96 shall be replaced by the following:

'1. A definitive anti-dumping duty is hereby imposed on imports of 3,5″ microdisks used to record and store encoded digital computer information falling within CN code ex 8523 20 90 (Taric code 8523 20 90*40) and originating in Malaysia, Mexico and the United States of America, with the exception of 3,5″ microdisks based on optically continuous servo tracking technology or magnetic sector servo tracking technology with a storage capacity of 120 MB or more.'

Article 4

Article 1(1) of Regulation (EC) No 1821/98 shall be replaced by the following:

'1. A definitive anti-dumping duty is hereby imposed on imports of 3,5″ microdisks used to record and store encoded digital computer information falling within CN code ex 8523 20 90 (Taric code 8523 20 90*40) and originating in Indonesia, with the exception of 3,5″ microdisks based on optically continuous servo tracking technology or magnetic sector servo tracking technology with a storage capacity of 120 MB or more.'

Article 5

Article 1(1) of Regulation (EC) No 1335/1999 shall be replaced by the following:

'1. A definitive anti-dumping duty is hereby imposed on imports of 3,5″ microdisks used to record and store encoded digital computer information falling within CN code ex 8523 20 90 (Taric code 8523 20 90*40) originating in Indonesia and produced and sold for export to the Community by PT Betadiskindo Binatama, with the exception of 3,5″ microdisks based on optically continuous servo tracking technology or magnetic sector servo tracking technology with a storage capacity of 120 MB or more.'

Article 6

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

It shall apply as from 17 December 1998.

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

Done at Brussels, 29 November 1999.

For the Council

The President

S. NIINISTÖ