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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 577/91

of 4 March 1991

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 Articles 10 and 11 thereof,

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

Whereas :

A. PROCEDURE

- (1) In December 1986, the Commission received a complaint lodged by the European Electronic Component Manufacturers' Association (EECA) allegedly on behalf of practically all actual or potential Community producers of EPROMs (erasable programmable read only memories). The complaint contained evidence of dumping of EPROMs originating in Japan and of substantial injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88 resulting therefrom. This evidence was considered sufficient to justify the initiation of a proceeding.
- (2) The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of certain types of electronic micro-circuits known as EPROMs falling, at the same time of initiation, within subheading ex 85.21

D of the Common Customs Tariff and corresponding to NIMEXE codes ex 85.21-47, ex 85.21-69 and ex 85.21-71, originating in Japan, and commenced an investigation.

- (3) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.
- (4) Five Japanese exporters, their related importers in the Community and all complainant Community companies made their views known in writing. Two Japanese exporters decided, for commercial reasons, to refrain from cooperating with the Commission.
- (5) An additional Japanese exporter made itself known at a later stage and, together with the two above-mentioned Japanese exporters, submitted information at a later stage in the proceeding.
- (6) A submission was also made by one end user.
- (7) No submissions were made by independent importers.
- (8) The majority of Japanese exporters and their related importers in the Community, all complainant companies and a Community end user requested, and were granted, hearings.
- (9) The Commission sought and verified all information it deemed to be necessary for the purposes of a determination and carried out investigations at the premises of the following :
 - (a) Community complainant companies :
 - SGS Microelettronica SpA Italy (SGS),
 - Thomson Semiconducteurs, France (Thomson), which have subsequently merged into SGS-Thomson (ST);

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 101, 14. 4. 1987, p. 10.

(b) Japanese producers/exporters :

- Fujitsu Ltd, Tokyo and Kawasaki (Fujitsu),
- Hitachi Ltd, Tokyo and Musashi (Hitachi),
- Mitsubishi Electric Corporation, Tokyo and Itami City, Osaka (Mitsubishi),
- NEC Corporation, Tokyo (NEC),
- Texas Instruments (Japan) Ltd, Tokyo (Texas);

(c) Importers in the Community related to Japanese exporters :

- Fujitsu Microelektronik GmbH, Germany
- Fujitsu Microelektronik Ireland Ltd, Ireland,
- Hitachi Electronic Components (Europe) GmbH, Germany,
- Hitachi Electronic Components (UK) Ltd, United Kingdom,
- Hitachi Semiconductor (Europe) GmbH, Germany,
- Mitsubishi Electric (Europe) GmbH, Germany,
- Mitsubishi Electric (UK) Ltd, United Kingdom,
- NEC Electronics (Germany) GmbH, Germany,
- NEC Semiconductors (UK) Ltd, United Kingdom,
- NEC Ireland Ltd, Ireland,
- Texas Instruments Deutschland GmbH, Germany,
- Texas Instruments Italia SpA, Italy,
- Texas Instruments France SA, France;

(d) End users :

- International Computers Ltd, United Kingdom.

- (10) The Commission requested, and received, further detailed written submissions from the complainant Community companies, the exporters and their related importers.
- (11) A submission prepared by a management consultancy firm was submitted by one Japanese exporter in respect of a study undertaken with regard to the issue of injury and Community interest relating to Japanese EPROMs.
- (12) These submissions were checked and analysed to the extent considered necessary.
- (13) The five Japanese exporters which cooperated in the investigation were informed of the Commission's findings and some commented both orally and in writing. These comments were duly considered.
- (14) The investigation of dumping covered the period April 1986 to March 1987. The examination of injury covered the years 1983 to 1987 as far as trends in volume, market shares and other economic factors were concerned and the year

1 April 1986 to 31 March 1987 for the detailed examination of price data.

- (15) Because of the complexity of the EPROMs industry, combined with the internationalization of manufacturing processes, this investigation has exceeded the normal time period.

B. PRODUCTS UNDER INVESTIGATION, LIKE PRODUCTS AND COMMUNITY INDUSTRY

(a) Products under investigation

- (16) The products under investigation are certain types of micro-circuits (EPROMs) including one-time programmable read only memories (OTPs)⁽¹⁾, whether assembled in processed wafer or die form, manufactured using variations of metal oxide semiconductor (MOS) process technology including complementary MOS types (CMOS) and N-channel types (NMOS) of all densities irrespective of access speed, configuration, package or frame. As from 1 January 1990 EPROMs fall within the following CN codes :
 - 8542 11 63, 8542 11 65 and 8542 11 66 (finished EPROMs),
 - 8542 11 10 (wafers not yet cut into chips),
 - 8542 11 30 (chips), and
 - 8542 11 76 (OTPs).
- (17) The Commission also requested information in respect of EPROMs assembled in third countries from processed wafers and dice produced in Japan for subsequent importation into the EC. The information gathered revealed that the quantities of such products imported into the EC at the time were relatively small. It was, therefore, decided not to investigate the assembly operations of such imports.

⁽¹⁾ EPROMs are used primarily for the programme storage function in electronic digital computing circuits. Microprocessors and central processing units for larger computers cannot function without a minimal set of preprogrammed digital instructions. These types of core instructions reside normally permanently in non-volatile memories such as EPROMs. EPROMs are either programmed by the supplier or by the user and the programme can be erased by the application of UV light through a window embedded in the ceramic case and can subsequently be re-programmed. OTPs are basically identical, they contain an identical die as the corresponding EPROM device, and have the same pinout and function, except that, once programmed, the programme cannot be erased because the less costly plastic package of an OTP does not permit the installation of a window for the application of UV light.

(b) Like product determination

Community through the related companies' sales network.

(18) In order to reach a determination in respect of like products in this proceeding, the Commission examined whether:

- (i) processed wafers and dice are like finished EPROMs;
- (ii) different densities and processes of EPROMs constitute different like products;

ad (i) *Processed wafers and dice*

(19) Several exporters argue that processed wafers and dice resulting therefrom are not like products to finished EPROMs. Although they believe that different types of EPROMs are best viewed as a family of distinct but interrelated products, they argue that a processed die without its casing and electrical connections is of no value since the casing and electrical connections are essential if the die is to be functional.

(20) Complainants argue that processed wafers and dice are like products to finished EPROMs since they are merely unpackaged EPROMs which embody the essential identity of the product. They further argue that failure to include unfinished forms of EPROMs within the scope of any anti-dumping measures would create a major loophole, since Japanese companies could simply ship the wafers and dice to the Community, assemble them there and then sell the finished EPROM on the open market.

(21) The Council notes that:

- once a wafer is processed or diffused, the dice contained therein have all the essential electronic properties which distinguish EPROMs from other products,
- there is virtually no separate merchant market for EPROMs wafers and dice,
- the processed dice are dedicated to a single use as the memory storage unit in a finished EPROM. In fact, certain Japanese exported large quantities of processed dice generally on pre-cut wafers to related companies in the EC for testing and assembly before entering the finished product into the commerce of the

(22) On the basis of the foregoing, it is determined that processed EPROM wafers and dice are like products to finished EPROMs.

ad (ii) *Different densities and processes of EPROMs*

(23) Most Japanese exporters argue that different densities and processes of EPROMs are to be regarded as separate like products and that these different types of EPROM are best viewed as a family of distinct but interrelated products. In view of this, it was further argued that anti-dumping duties which might be imposed need to be separately assessed for each different type of EPROM and that differentiating between different densities and technologies is necessary if appropriate consideration is to be given to injury and Community interest questions. The consequence of this position, it was maintained, is that any EPROMs of higher than one megabit density which are allegedly not included in the complaint and were not produced during the period under investigation and therefore not investigated would be outside the scope of any anti-dumping duties which might be imposed.

(24) Some Japanese exporters further argue that new generation EPROMs of more than one megabit density cannot be regarded as like products to current EPROMs due to:

- the different design environment and manufacturing technology,
- new plants and the necessity of new equipment for manufacturing,
- new architecture and different application.

(25) The complainants argue that the differing densities and process technologies do not result in the formation of a different like product. They maintain that the distinctions drawn by certain exporters would yield an analysis of numerous artificial industries, splintering a widely recognized product and production category. They further argued that to define different products on the basis of density or the improvement or relatively minor variations of the production process would elevate minor differences in characteristics and uses above major identities when none of these distinctions warrants the creation of a separate like product.

The Council notes that :

- (26) — through the effects of a continuous learning process and refinements in technology, smaller, more dense, complex and higher performance memory circuits have been possible. In fact, since the introduction of EPROMs in the early seventies, successive generation EPROMs representing a quadrupling or doubling of memory capacity over the previous generation are being introduced approximately every three to four years. The investigation has revealed that in 1984, the 64K EPROM was the most sold generation in the Community, which had largely displaced the 16K and 32K EPROM while the 256K EPROM was first being introduced. In 1986, however, the 256K EPROM was sold in significant quantities gradually displacing the 64K EPROM with the 512K and one megabit generations starting to be introduced,

- (27) — in addition, EPROMs of different densities and processes all fall within the same general category of products which perform the same basic function regardless of the size of memory. Although design and process technology have changed over the successive generations of density, the essential characteristic of an EPROM, its memory function, has remained the same. Furthermore its essential physical characteristics have also remained the same.

- (28) — although different densities of EPROMs are not necessarily interchangeable from a practical point of view, end-use products (computers, etc.) are redesigned or conceived to accommodate higher density EPROMs in order to save space on circuit boards and manufacturing costs. In view of this generational shift in both EPROM capacity and end-use designs, the pricing of successive generations of EPROMs is closely linked. In this respect, it has been alleged by several parties involved in the proceeding that the introduction of a larger capacity EPROM will start to depress prices of the smaller size EPROM as soon as the larger capacity EPROM is priced at a certain level in relation to the smaller size EPROM.

- (29) Taking the foregoing into consideration, it is considered that the similarities of EPROMs of different densities and processes outweigh their differences in memory capacity, design and process technology. In conclusion, it is determined that EPROMs

of different densities and processes are like products.

Future densities of EPROMs

- (30) It has also been considered whether future densities of EPROMs e.g. two and four megabits should be regarded as like products. It is noted that during the period under investigation there were no imports of densities above one megabit, although certain complainant companies and Japanese exporters were already carrying out research into such products.

It is also noted that the notice initiating this proceeding refers to all densities of EPROMs.

On the basis of the information available with respect to current density and future density EPROMs, in particular with regard to technical specifications and application, it is considered that all densities of EPROM including future densities are one like product.

- (31) *Flash EPROMs*

After the investigation period, a new product variation, so-called 'flash' EPROMs, started to come onto the market. Most Japanese exporters argue that this product variation should be considered as an electrically erasable read only memory (EPROM) which is not subject to this anti-dumping procedure. The complainant companies are of the view that the technical properties of a flash EPROM are basically the same as EPROMs and should thus be considered as like products.

It has to be noted that in effect EPROMs are not considered as like products and are excluded from this procedure. From the technical information at hand it can be concluded that flash EPROMs, despite being electrically erasable, are built on EPROM and not on EPROM cell structure and are assembled into EPROM/OTP packages and have the same pinout as the latter. Furthermore, flash EPROMs generally substitute EPROMs. For these reasons a flash EPROM if it is based on EPROM technology is considered to be a like product to EPROMs.

- (32) *Products intended for military applications*

One exporter argued that EPROMs intended for military applications should not be regarded as the same like product as commercial EPROMs and in consequence should not be covered by the proceeding

It is noted that, notwithstanding any differences in customs treatment, EPROMs for military applications are standard EPROMs which undergo severe

testing and that such products are used equally for civil applications which require high performance and reliability (satellites, etc.).

In conclusion, it is determined that EPROMs for military applications and EPROMs for commercial applications are one like product.

(c) Community industry

- (33) In relation to the determination of the like product, it had to be defined for the purposes of the injury determination in accordance with Article 4 (5) of Regulation 2423/88 which companies constitute the Community industry. To this end, the following were analysed :

- (i) the manufacturing processes involved in EPROM production ;
- (ii) EPROM related activities of those Community companies which made themselves known during the proceeding.

- (34) ad (i) With regard to the manufacturing processes involved in EPROM production, it is noted that production can roughly be divided into two major phases :

- wafer diffusion and sorting (also referred to as front-end operations): where dice are produced on the silicon wafer and each die on the wafer is tested in order to mark defects. Wafer diffusion is technologically the most demanding production step which involves considerable investment both in basic research and in developing the highly sophisticated manufacturing technology. Once the wafer is processed, all essential characteristics of the finished product are already contained on the die found thereon,
- assembly and final testing: where the dice contained on the wafer are cut wire bonded, encapsulated into ceramic or other packages and finally tested before shipment. This production step (also referred to as back-end operations), is technologically less demanding and requires relatively modest capital investment in research and development. However, as a ratio of total cost of production, assembly costs are generally significant, and may even exceed in some cases wafer diffusion costs.

- (35) ad (ii) With regard to EPROM activities of those Community companies which made themselves known during the proceeding, it is

noted that, setting aside the two complainant companies (currently one following the merger of SGS and Thomson), three companies related to Japanese exporters imported wafers and dice during the period under investigation which were then assembled by the into EPROMs in the Community.

- (36) Wafer diffusion is from a technological and capital investment point of view more significant than the assembly and testing operations, but assembly and testing operations can account for a significant part of the cost of manufacture.

- (37) However, it can be left open whether companies performing assembly or testing operations only belong to the Community EPROM industry.

- (38) Even if companies performing assembly or testing operations only were part of the Community EPROM industry, it has to be considered whether, pursuant to the first indent of Article 4 (5) of Regulation (EEC) 2423/88, those companies related to Japanese exporters which themselves import the products under investigation should be excluded from the definition of Community industry. In this respect, the fact has been taken into consideration that those companies that import and assemble in the Community wafers and dice originating in Japan sell the finished product through the same corporate sales channels as direct imports of EPROMs originating from the same Japanese exporter and that the pricing of finished EPROMs, whether assembled in the Community or exported directly from Japan, is controlled by the same Japanese parent company. Furthermore, any dumping by the Japanese exporter influences the condition of the related assembling company, since it benefits directly or indirectly from the unfair practice. Under these circumstances, it is considered that those companies which import wafers and dice for assembly in the Community from related Japanese exporters should be excluded from the Community producers representing the Community industry.

Arguments concerning the definition of Community industry

- (39) Several Japanese exporters argue that they cannot accept that the complainants represent practically all actual or potential Community producers of EPROMs as the notice of initiation of the anti-dumping proceeding states. They submitted that since the technology for manufacturing EPROM wafers and dice can be purchased from numerous sources, any large-scale European electronic

components manufacturer is a potential Community producer of EPROMs. They also argue that, since assembly and testing account for a significant part of the production costs of an EPROM, those companies performing assembly operations in the Community should be included in the definition of Community industry. They support this point by submitting that, since under the legislation applicable at that time, assembly operations were sufficient to confer Community origin on the products assembled in the Community, it would be more appropriate to define Community industry in terms of products which had their origin within the Community.

- (40) In response to these arguments, it has to be pointed out that following the publication of the notice of initiation, no parties came forward, other than the two complainant companies and some assembling companies related to Japanese exporters, claiming that they were actual or potential producers of EPROMs and that in consequence Community industry should be interpreted so as to include them. In this respect, the Council is of the view that companies that may be technically capable of producing EPROMs are not to be regarded as potential producers unless they have committed themselves in some way to future EPROM production.

As for the Japanese-related companies which import wafers and dice for assembly in the Community, the Council refers to recitals 36, 37 and 38.

- (41) In conclusion, the term 'Community industry' is interpreted as referring to the complainant companies represented by the BECA, i.e. SGS and Thomson.

C. NORMAL VALUE

- (42) With a view to determining normal values for the device types exported to, and sold in, the Community, prices and costs on the Japanese market were analysed. This analysis revealed that prices for the 128K, 256K, 512K and 1M densities were declining over the period under investigation while for the 16K, 32K and 64K densities which are products at the end of their life cycles, prices were stable or slightly increasing. With regard to costs, information on a quarterly basis revealed that, in

general, costs for all densities declined over the period but that for some quarters costs were higher than in the preceding quarter due to a lower production. Costs for the 64K were increasing slightly in the last quarter as production volumes were being reduced.

- (43) For each exporter, prices were compared with the weighted average costs of production. This revealed that, for most exporters and for many device types, costs of production were, not only for substantial quantities but also on a weighted average basis, higher than domestic prices. The sales pertaining to these EPROM devices were therefore, pursuant to Article 2 (4) of Regulation (EEC) No 2423/88, considered as not having been made in the ordinary course of trade. For those device types sold at a loss, normal value was constructed. For the profitable EPROM devices sold on the domestic market, the domestic prices were used as the basis for the normal value determination where the sales volume involved exceeded 5 % of the sales volume in the Community.

Where the sales volume on the Japanese market was 5 % or below, normal value was also constructed. In adopting this approach, it was considered, in accordance with past practice, that a sales volume not exceeding the 5 % threshold is insufficient to permit a proper comparison.

- (44) For exports of EPROM dice on pre-cut wafer, already cut EPROM dice or untested EPROM devices, normal values were also constructed, since these products were not sold on the Japanese market.

- (45) Constructed values were determined by adding cost of production and a reasonable margin of profit. The cost of production was computed on the basis of all costs, both fixed and variable, incurred in Japan, of materials and manufacture to which was added a reasonable amount for selling, administrative and other general expenses and profit.

- (46) As regards the amounts of selling, administrative and other general expenses to be included in such constructed values, these were calculated on the basis of the expenses actually incurred by the exporter concerned; the amounts of profit to be included in such constructed values were calculated on the basis of profits realized by the exporter concerned on its profitable sales of EPROMs on the domestic market during the period under investigation.

(47) Cost of production was established by examining the economic entity of the exporter with regard to its activities on the Japanese market. That is to say, they were computed on the basis of the full costs of the parent/manufacturing company and the full costs of any sales subsidiaries or related companies performing the function of a sales department for the parent company. In this case, transactions between the parent/manufacturing company and its sales company were disregarded and transactions by the sales company to independent customers were taken into consideration for normal value purposes.

(48) Where costs had to be allocated to several products in order to compute costs relating to EPROMs, the accounting practice of the exporter was generally accepted as being reasonable. However, following investigations at the exporters' premises, initial responses to the Commission's questionnaire were, in practically all cases, either revised or complemented by information. In addition, modifications were made for certain exporters in respect of the following :

(49) *Research and Development expenses (R & D)*

All R & D expenses incurred in the period of investigation which related in any way to EPROM products, be it current or future products, have been appropriately allocated to the EPROM cost of production incurred during the period of investigation. For some exporters, certain R & D expenses declared have been amended following a more precise allocation for the expense in question.

In one particular case, the allocation made by the exporter resulted in MOS products other than EPROMs incurring R & D expenses significantly greater than EPROMs. On the basis of an analysis undertaken by the Commission with reference to R & D expenses incurred by other parties involved in the proceeding, and taking into consideration the importance of EPROM products as a technology driver for other MOS products, it has been decided to allocate the R & D expenses declared in total for MOS products to EPROMs on the basis of a turnover allocation.

Arguments concerning the normal value determination

(50) Some exporters argue that the normal value should be determined on the basis of the prices actually paid, or payable, on the domestic market on the grounds that, although sales of some devices may have been made at a loss, all costs would have been recovered, albeit over a period longer than the

investigation period, and therefore the prices should be regarded as being in the ordinary course of trade.

(51) The Council cannot accept this argument. It considers that, since the investigation period covers a whole year, EPROM devices sold at prices which did not permit recovery of all costs reasonably allocated within this period can reasonably be regarded as not having been made in the ordinary course of trade pursuant to Article 2 (4) (b) of Regulation (EEC) No 2423/88.

(52) Another exporter argues that there is a need to take account of the specific and unusual situation of the EPROM industry in which products become rapidly outdated and costs of production decline sharply over a short period.

It further argues that prices have been changing both during and since the investigation period and accordingly, were a single normal value to be determined for the one-year investigation period and compared with export prices transaction by transaction over the same period, the results obtained would bear no relation to the market situation during that period. This exporter therefore proposed that, in accordance with the requirement in Article 2 (9) of Regulation (EEC) No 2423/88 that normal value and export price be determined as nearly as possible at the same time, the comparisons between normal value and export price be made on a quarterly basis. This proposal would therefore require the establishment of quarterly normal values.

(53) The Commission, following analysis of the specific and unusual situation of the EPROM industry, took the view in the early stages of the proceeding that normal values should be established on a quarterly basis in order to reach a more precise dumping calculation. For this reason, the Commission requested in its questionnaires the submission of data on a quarterly basis. When, on analysis of this data, it became apparent that normal value for most EPROM devices would have to be constructed on the basis of costs of production, it had to take into consideration when examining all exporters' submissions, the volatility of costs, the absence of cost data for some devices and some quarters due to non-production and the difficulties in relating actual costs to individual sales transactions. For these reasons, the Council concludes that it would be more reasonable to determine normal values on an annual basis. In so doing, the Council considers that the results obtained reflect the market situation during the period under investigation.

Reasonable profit

- (54) Several exporters argue that the margin of profit calculated by the Commission by reference to those EPROM devices which yielded a profit over the period under investigation is unreasonable in the light of the depressed state of demand at the time.

Another exporter argued that the calculation based on a weighted average of all profitable device types sold on the domestic market excluded device types sold at a loss, and that a fair and representative 'reasonable profit' should be calculated on sales both at a profit and at a loss.

It was further argued that it is misleading to view any given generation of memory in isolation or at a snapshot point in time and that it would give a more realistic picture if profitability were evaluated over complete life cycles of products as well as for EPROMs generally.

- (55) When constructing normal values, the Council has to determine a reasonable margin of profit to add to cost of production. Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88 provides the basis for reaching a reasonable profit, i.e. 'by reference to ... the profit realized by the producer or exporter on the profitable sales of like products on the domestic market'.

Accordingly, profitable sales were determined as described at recital 43. Where, following this approach, sales have been determined profitable over the said period, individual sales may have been made at a loss, provided that sufficient sales at a profit led to an overall profit being realized for the period.

This approach is considered reasonable and the results obtained are not viewed as being unreliable. The fact that they differ from exporter to exporter reflects the particular competitive position and pricing policy of each exporter.

D. EXPORT PRICE

- (56) All five exporters which had responded to the Commission's questionnaire within the time limits laid down sold finished EPROMs to independent customers in the Community through Community-based sales subsidiaries. All five exporters shipped finished EPROMs to the Community from Japan. Three exporters shipped, in addition, wafers and dice for further processing in manufacturing

subsidiaries in the Community prior to sale in the finished state via the sales subsidiaries. Several exporters made direct sales of finished EPROMs to independent importers in the Community in addition to sales via their sales subsidiaries. Some exporters made sales of EPROMs, although representing small quantities, intended for export to the Community via non-related Japanese purchase offices of Community companies.

- (57) With regard to exporters by Japanese producers directly to independent importers in the EC and to independent purchasers in Japan (Japanese purchase offices) export prices were determined on the basis of the prices actually paid, or payable, for the products sold.

- (58) In all other cases, i.e. where exports were made to subsidiary companies which imported the product into the EC, it was considered appropriate in view of the relationship between exporter and importer to construct export prices on the basis of prices at which the finished products were first resold to independent purchasers in the EC. For this calculation, it was necessary to separate:

- (i) EPROMs that were exported in a finished state and sold to independent purchasers in the same state; from
- (ii) EPROMs exported for further processing in the Community and subsequently sold in a finished state.

For some exporters which assembled or further processed in the Community, it was not possible to identify with any precision sales of the finished EPROMs according to whether they were exported in the same state from Japan or assembled or further processed in the Community from wafers or dice. In this case, the sales quantities of the finished EPROMs were separated on the basis of the ratio between the quantities of finished EPROMs and the quantities of EPROMs for assembly or further processing imported into the Community.

- ad (i) Constructed cif Community border export prices for finished products were reached by deducting from resale prices to independent purchasers all costs incurred by the sales subsidiary between importation and resale including duties and taxes and a reasonable profit margin. In the absence of cooperation from independent importers, the profit margin was, on the basis of experience, assessed at 5 % on sales turnover.

ad (ii) Constructed cif Community border export prices for unfinished products were reached by deducting from resale prices to independent purchasers, as a first step, the costs and the profit margin determined for the sales subsidiary and, as a second step, all costs incurred by the manufacturing subsidiary for the assembly of further processing operations. No additional profit margin was attributed to the manufacturing subsidiary.

- (59) Some export transactions relating to certain device types were neglected either because the quantities involved were *de minimis* or because no reliable information was available to establish a normal value. It is considered that this approach has had a negligible impact on the dumping findings.

Arguments concerning the determination of export prices

- (60) One exporter argues that a 'reasonable profit' margin for its importing subsidiaries in the Community is less than the 5 % used.
- (61) The Council considers that actual profits or losses realized by an exporter's subsidiaries which perform *inter alia* the function of an importer in the Community cannot be taken into consideration because such profits or losses are influenced by the relationship between exporting and importing companies. Based on experience, a 5 % profit margin is considered reasonable for an independent importer dealing in products similar to that under investigation.
- (62) Another exporter argues that the methodology used by the Commission to construct export prices for wafers and dice from prices of the finished EPROMs to independent purchasers in the EC is extremely unfair. It claimed that the only result of its decision to invest in European EPROM production facilities has been that its dumping margin is considerably higher than it would have been if it had not manufactured within the EC.
- (63) Without prejudice to the merits of this exporter's decision to invest in European production facilities, the Council considers that the methodology adopted to construct export prices for wafers and dice is reasonable since it involves making an allowance for all costs incurred between importation and resale and for a reasonable profit in accor-

dance with Article 2 (8) (b) of Regulation (EEC) No 2423/88.

The fact that the costs incurred by this exporter in the Community were high compared to those incurred in Japan does not invalidate the methodology used. Furthermore, other exporters with assembly operations in the Community have not contested the methodology.

E. COMPARISON

- (64) For the purposes of a fair comparison between normal value and export prices, account had to be taken, where appropriate, of differences affecting price comparability, such as differences in physical characteristics, import charges and indirect taxes and differences in directly related selling costs where claims for these differences in the sales under consideration were made. All comparisons were made at ex works level.

- (65) As regards physical characteristics, EPROM devices on the basis of the following technical characteristics and specifications were isolated:

- by product group, i.e. assembled EPROMs, processed wafers or processed dice,
- by density,
- by process, e.g. CMOS and NMOS including shrunk die versions,
- by package material (ceramic or plastic, etc.),
- by type of packaging (DIP, LCC, SOP, etc.),
- by speed grade (access time),
- by lead frame coating,
- by configuration.

The export price of a product isolated in accordance with these characteristics and specifications was, therefore, easily compared with the normal value for an identical product.

- (66) As regards allowances for directly related selling costs, adjustments were made for differences in:
- transport, insurance, handling, loading and ancillary costs,
 - packing,
 - payment terms,
 - warranties, guarantees, technical assistance and other after sales services,
 - salesmen's salaries and commissions.

- (67) In view of the relatively minor adjustments claimed for comparison purposes and the complexities of the investigation in other areas, the claims made by exporters were accepted without detailed verification except in those cases where it was evident from the submissions that expenses claimed for allowances were not directly related costs. This was particularly the case for intra-company transport and insurance costs, and salaries of staff alleged to be salesmen. In some cases, claims were made for patent fees. However, since the adjustment in question affected equally both normal and export price and therefore has had no impact on the dumping calculation, no adjustment was deemed appropriate.

F. MARGINS

- (68) Normal value for each of the devices of each exporter was compared with export prices of comparable devices on a transaction-by-transaction basis. The examination of the facts shows the existence of dumping in respect of imports of EPROMs originating in Japan from all the Japanese producers/exporters investigated, namely Fujitsu Limited, Hitachi Ltd, Mitsubishi Electric Corporation, NEC Corporation, and Texas Instruments (Japan) Ltd, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

The margins of dumping varied according to exporter and for each exporter according to importing Member State, EPROM device and customer. The weighted average margins of the exporters named above when expressed as a percentage of the cif Community border price vary between 35 and 106 %.

- (69) For those exporters which did not reply to the Commission's questionnaire, dumping was determined on the basis of the facts available in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88.

In this connection, it was considered that the results of the investigation provided the most appropriate basis for determination of the margin of dumping and that it would create an opportunity for circumvention of the duty to hold that the dumping margin for these exporters was any lower than the highest dumping margin of 106 % determined with regard to an exporter which had co-operated in the investigation. For these reasons, it is considered appropriate to use this latter dumping margin for this group of exporters.

G. INJURY

(a) Development and present state of the Community industry

- (70) The Commission received and verified detailed information on the EPROM activities of the complainant companies constituting the Community industry.

This information has revealed that there are two complainant companies, SGS of Italy and Thomson of France, which merged their semiconductor activities after the investigation period.

- (71) One company entered the semiconductor business by acquiring, in 1983, a company which had previously been a subsidiary of two other companies. EPROM products were available in this acquired company in NMOS 16K, 32K and 64K densities, and in CMOS 16K and 32K densities. The company decided to increase its EPROM business activities and initiated a major R&D programme at the beginning of 1984 to develop new products in both NMOS (64K, 128K, 256K) and CMOS (64K) as well as new technologies. By the end of that year, total EPROM sales resulting from these developments were expected, for the period 1985 to 1987, to be considerable. However, these sales forecasts were never achieved.

— Delays which had occurred in starting the 64K DRAM production affected the development of 64K EPROMs, consequently wafers for 64K EPROMs had to be purchased from a third country supplier for assembly by this company in the EC.

— Market conditions forced this company to further review its R&D programme particularly in the light of massive losses on its EPROM sales. The company was prevented from entering into full fabrication of certain higher density NMOS products and had to discontinue any further work on NMOS technology. The CMOS development was continued but suffered cutbacks during 1986 due to the continuing low price levels.

- (72) The other company has been producing EPROMs in the EC from the early 1980s. During the investigation period a wide range of EPROMs, including the 16K, 32K, 64K, 128K, 256K and 512K densities, were produced in significant volume.

From 1983 to 1985, production was exclusively carried out in an existing production facility. In late 1983 this company adopted a plan providing for the building of a more advanced production line

which was primarily intended for large volume production of 64K and 256K devices and it was scheduled that by the end of 1986 the new production line would be operating at full capacity. Due to a dramatic price depression for EPROMs on both the EC and world markets, this company had to postpone the full implementation of this plan on several occasions and a full capacity ramp-up could only be achieved by the end of 1988 instead of the end of 1986 as provided for in the initial plan, thus having caused a delay of about two years, and significantly contributing to the considerable losses and lack of return on investment suffered by this company.

(b) Status of the Community industry

- (73) From the foregoing it is apparent that both complainant companies have been producing and selling EPROMs in considerable quantities prior to, and during, the investigation period in and outside the EC. This is not seriously contested by the Japanese exporters. Thus it is considered that the Community EPROM industry, as represented by the complainant companies, is an established industry.

Injury factors

(a) Volume and market shares of imports of EPROMs of Japanese origin

- (74) No precise figures concerning total imports and total consumption were available. However, on the basis of information obtained from parties involved in the proceeding and from a number of other sources, the Commission was able to assess in a reasonable manner consumption in the EC. This revealed that EPROM consumption increased considerably from 1984 (29,9 million units) to 1986 (33,2 million units), decreasing in 1987 (28,8 million units). In the same period, Japanese sales in the EC increased from around 6 million units in 1983 to 15,6 million units in 1987, peaking at 26,2 million units in 1986. This development represents an increase of market share held by Japanese producers from 71 % in 1984 to 79 % in 1986, and a decrease in 1987 to 54 %. It should be noted that these figures are based on EPROM units and it is considered that, since demand is for memory capacity, a more precise method would be to calculate the number of bits of memory capacity according to the memory density of individual units. The information available, however, did not permit this calculation over the whole period concerned. The information does suggest that the consumption in 1987, when expressed in memory bits, was higher than that shown on a unit basis and that the market share of the Japanese producers was also higher. Sales of EPROMs of Japanese

origin in the EC measured in memory bits showed a significant increase from 1984 to 1986, i.e.

- 1984 : 1,2 million megabits,
- 1985 : 1,8 million megabits,
- 1986 : 3,0 million megabits.

- (75) It came to light during the investigation that a possible grey market existed for EPROM products in view of the fact that EPROM prices for certain devices were alleged to be somewhat lower in Japan than in the EC. It has not been possible to quantify such sales but, on the information available, it is believed that the quantities involved were relatively small. In any case, whatever the quantities may have been, their inclusion in the calculations would lead to an increase in the market share held by Japanese products.

(b) Prices

- (76) The Commission's analysis of EPROM prices revealed that on the EC and world markets prices decreased significantly prior to and during the period under investigation. Only at the end of this period did prices stabilize or, for some devices, slightly increase. Further analysis revealed that this acute price decline was greater than could be expected from economies of scale and the learning curve effect well known to this industry. In fact, prices of Japanese EPROMs were generally at levels below production costs.

(c) Other relevant economic factors

- (77) It was found that for one complainant company production decreased, both in unit and cumulative capacity terms, over the period from 1984 through the investigation period. For the other complainant company, however, production increased over this period.
- (78) As regards capacity utilization by the complainant companies, it was found that a significant reduction had occurred at both complainant companies between 1984 and the investigation period.
- (79) It was established that stocks increased dramatically at both complainant companies between 1984 and the investigation period, both in unit terms as in terms of cumulative memory capacity.
- (80) Concerning EPROM turnover of the two complainant companies, it was found that it has decreased significantly for both complainant companies over the time span between 1984 and the investigation period. It is furthermore worthwhile mentioning that even the complainant company, which could significantly increase its EPROM sales over the period referred to above both in unit and cumulative memory capacity terms, nevertheless suffered a decrease in EPROM turnover.

- (81) As regards the profit and loss situation of the EC EPROM manufacturers, it has been established that they suffered heavy losses during the period from 1985 to 1987 peaking in 1986 as a result of the depressed market prices.

(d) *Conclusion*

- (82) The facts referred to above show that, following the significant increase of Japanese EPROM imports and sales, combined with rapidly declining prices, the Community industry was not in a position fully to use capacity and benefit from economies of scale; turnover decreased and stocks increased. This resulted in considerable financial losses and lack or delay of return on investment.

H. CAUSATION OF INJURY BY THE DUMPED IMPORTS

(a) *Effects of dumped imports and other factors*

- (83) The Japanese producers/exporters claim that their dumped imports were not the cause of the price depression on the EC EPROM market but that they had to meet existing market conditions. It has been established that, for the last four years, Japan has been by far the most significant exporter of EPROMs to the Community, steadily increasing its market share at the expense of the Community producers and American exporters. Furthermore, the Japanese producers/exporters hold a similar position on the world market. Therefore, it can be assumed that the Japanese exporters/producers acted as price leaders.
- (84) The Japanese producers/exporters further claim that the injury caused to the Community EPROM producers was not brought about by the depressed market prices but by other factors such as late market entry, poor performance on non-price factors, inappropriate strategy and management, structural and technical problems. While it is true that the Community producers were relatively late

entrants and were primarily active in the market segment for lower and medium density EPROMs, it has to be noted that both complainant companies had well established sales relationships with a significant number of major EPROM consumers, which suggests that performance, strategy and management and product quality met the expectations of these consumers.

- (85) Some Japanese producers/exporters argue that the complainant companies neglected their EPROM business in order to produce more profitable products in the facilities built for EPROMs. The investigation did not, however, produce any evidence supporting this argument.

(b) *Conclusions*

- (86) The foregoing has led the Council to determine that the effects of dumped imports of EPROMs originating in Japan, taken in isolation, have to be considered as causing material injury to the Community EPROM industry.

I. COMMUNITY INTEREST

- (87) In assessing whether it is in the interest of the Community to take measures against dumped imports of EPROMs from Japan which have been shown to cause injury to the complainant Community industry, the Council has taken into consideration the benefits derived from mass EPROM production, and the particular situation of the Community EPROM industry and user industries.

With regard to the benefits derived from mass EPROM production, the Council is of the view that a viable Community EPROM industry will contribute to a strong Community electronics industry overall. First, EPROMs serve as a technology driver for other more complex semiconductor devices. Second, the semiconductor industry of which EPROMs are a part is a strategic industry in that semiconductors are a key component for the data processing, telecommunications and automotive industries.

Third, the use of the most advanced technology in EPROM production not only improves the competitiveness of this industry but also that of the downstream electronics industry. Fourth, a strong Community EPROM industry will continue to provide an alternative source of supply to the Community electronics industry thereby reducing dependence on the Japanese producers of EPROMs. This latter aspect is considered essential, given the fact that Japanese producers are generally vertically integrated and also manufacture the end products which compete with those produced by the Community electronics industry.

As regards the particular situation of the Community EPROM industry, it has to be noted that the two complainant companies which have subsequently merged their EPROM activities have been well established EPROM producers for a long time, offering a great variety of product subtypes and continually maintaining a high degree of investment in R&D, plant facilities and equipment. This state of affairs renders it particularly vulnerable to any renewed dumping practices and it requires a certain degree of reliance on fair market conditions for the future.

In the light of the findings relating to the investigation period, it can be foreseen that reoccurrence of dumping by the Japanese exporters and the resulting negative consequences for the financial status of the European producers would force the latter to discontinue their EPROM production. This would give the Japanese exporters an even more dominant position on the EC market and thus reduce competition to an extent incompatible with the interests of the Community.

Arguments concerning Community interest

(88) Most parties involved in the proceeding submitted arguments on whether the imposition of anti-dumping duties or other measures are in the interest of the Community. Nearly all Japanese exporters argue against the imposition of duties. The arguments made by them are in most cases variations of a smaller number of core arguments which are itemized below:

- the imposition of anti-dumping duties would not be in the Community interest because they would raise the average prices of EPROM products in the EC thereby adversely affecting the competitive position of certain high-technology industries and undermining efforts to make such industries more competitive,

- US and other non-European producers will benefit from such higher prices far more than the complainants,
- higher prices would encourage some EPROM users to consider moving parts of their operations overseas,
- the complainants' market share would not increase significantly because they are likely to be uncompetitive on costs and non-price factors.

(89) BECA, representing the complainants, argues that the taking of measures is in the interest of the Community on the grounds that:

- manufacturing skills in semiconductor technology are crucial for a strong European electronics industry as a whole, since the EPROM is a major semiconductor technology driver and the semiconductor industry is a strategic industry,
- without viable semiconductor production, competitiveness of European producers of other electronic products will be endangered and will remain at a technological disadvantage compared to Japanese producers,
- the European electronics industry must have a local source of supply and be enabled to co-operate with Community semiconductor producers in order to develop new, competitive electronic products. All major Japanese semiconductor producers are vertically integrated and also compete with European user industries. Not to safeguard a viable Community EPROM industry would mean to restrict EC users to foreign sources of supply,
- without European EPROM producers, competition would be reduced and a strong market force would disappear, so that third country producers would be able to dictate the types of product to be supplied as well as their prices.

(90) The Council has taken account of all the views advanced.

(91) In the first instance, the Council recognizes the importance of a strong Community electronics industry for the Community industry generally and the strategic role played by EPROMs in this respect as a product at the leading edge of technology. Community action in the field of research and development projects such as Jessi are evidence of this recognition. Such action is taken to improve the competitiveness of an industry on the general understanding that it will be able to operate in a fair market environment.

(92) Second, as to the arguments raised by exporters concerning the negative impact of higher prices on the EC market resulting from the imposition of

anti-dumping duties, it cannot be accepted that advantages gained in the past through unfair dumping practices can now be invoked as a justification for not taking the necessary steps to establish a fair trading situation.

- (93) As to the argument that the cost of anti-dumping duties to the EPROM consuming industries would be completely disproportionate to any benefit which might result for the complainants, the Council points to the fact that the cost of EPROMs is generally quite small if compared to the cost of the final product manufactured by the user industries. Therefore, there is nothing which could suggest that the cost of anti-dumping measures would be disproportionate for the user industries. In this connection, it is significant that this argument was not raised by an EPROM user.
- (94) As to the argument that the US and other non-European producers will benefit from higher prices of EPROMs more than the complainants as a result of a switch in demand, no conclusive evidence has been submitted and it can only be remarked that appropriate action would be taken should it become evident that such suppliers dump.
- (95) In conclusion, after having considered the various arguments of all interested parties, the Council considers that the Community interest calls for granting protection to the Community EPROM industry to ensure that it can develop in a fair market environment. However, given the particular characteristics of the EPROM industry characterized by short life cycle products, volatile and rapidly declining costs and prices and the price development since the period under investigation, it is considered that in the interest of the Community, the necessary protection should be given by means of a measure which could be suitably tailored to follow the dynamics of the EPROM industry without causing unnecessary hindrance to the user industries.

J. MEASURES

Price undertakings

- (96) By Decision 99/131/EEC⁽¹⁾, the Commission has accepted, in accordance with Article 10 (3) of Regulation (EEC) No 2423/88, undertakings offered by each of the following Japanese exporters:

- Fujitsu Ltd,
- Hitachi Ltd,
- Mitsubishi Electric Corp.,
- NEC Corp.,
- Sharp Corp.,
- Texas Instruments (Japan) Ltd, and,
- Toshiba Corp.

Duty

- (97) On the basis of the information available, the Council believes that the exporters which have offered undertakings currently represent practically all Japanese EPROM producers which export EPROMs to the EC. However, in order to safeguard the effectiveness of the undertakings by covering *inter alia* 'grey market' sales to the EC, known to exist for this product, a definitive anti-dumping duty should be imposed.
- (98) Given that, in order to avoid circumvention, such duty to be imposed should be at a level equal to the highest dumping margin found for an exporter cooperating in the proceeding but lower were a lesser duty adequate to remove the injury, the Commission quantified the injury caused to the complainant companies by dumped imports from Japan in the following manner:

Japanese weighted average resale prices of specific EPROM types were compared with the costs of production of the same types which the complainant companies manufactured and sold in the EC.

A profit margin has been added to these cost figures to take into account *inter alia* new research and development programmes and investment required for the necessary machinery capable of operation on the basis of a lower micron technology. Guided by the results of a study prepared by the University of Munich on necessary profit levels for the Community DRAM industry, which is considered to be broadly similar to the EPROM industry in this respect, a margin of 25 % on cost of production was considered reasonable in these circumstances.

In all cases, the comparison of the EC companies' costs, increased by the profit margin referred to above, with each Japanese exporter's resale price for the given product revealed that the latter was considerably lower. The difference was calculated for each type and density, weighted by the exporter's sales quantities in the EC and expressed finally as a percentage of the cif value for the same quantities used in the calculation.

⁽¹⁾ See page 42 of this Official Journal.

The result of this operation shows that while the dumping margins established for all but one Japanese exporter, when expressed as a percentage of cif value, are considerably lower than the percentage required to eliminate injury, the latter percentage remains below the level of the highest dumping margin found. For the exporter with the highest dumping margin a duty of 94 % on cif value would, therefore, be sufficient to eliminate the injury caused to the Community EPROM industry.

- (99) In the light of these circumstances, the duty should be in the form of an *ad valorem* duty and the rate should be 94 % of the net free-at-Community border price before duty.
- (100) In view of the fact that the undertakings offered by the exporters named at recital 96 have been accepted by the Commission, these exporters can be excluded from the scope of application of the duty on imports of EPROMs originating in Japan,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of certain types of electronic micro-circuits known as EPROMs (erasable programmable read only memories) falling within CN codes ex 8542 11 10, ex 8542 11 30, 8542 11 63 or 8542 11 65 or 8542 11 66 and ex 8542 11 76 (for Taric and additional codes see Annex II), originating in Japan.

2. For the purpose of this Regulation, EPROMs comprise all types including one time programmable read only memories (OTPs) and flash EPROMs if based on EPROM technology of all densities in finished and unfinished forms such as wafers and dice (mounted or unmounted).

3. The rate of the duty shall be 94 % of the net free-at-Community-frontier price before duty.

4. Products referred to in paragraph 1 shall be exempt from the duty, provided that:

- they are produced and exported to the EC by the following companies which have given an undertaking

which is accepted pursuant to Article 1 of Decision 91/131/EEC:

- Fujitsu Ltd,
- Hitachi Ltd,
- Mitsubishi Electric Corp.,
- NEC Corp.,
- Sharp Corp.,
- Texas Instruments (Japan) Ltd and
- Toshiba Corp., or that

- they are produced by one of the companies listed in the first indent and exported to the Community by one of its affiliated companies listed in Annex I, or that

- 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 EC by the said company under the undertakings referred to in Article 1 of Decision 91/131/EEC, or that the following conditions are fulfilled:

- the date of order confirmation to the first independent purchaser for the products in question is prior to the entry into force of this Regulation, and
- effective delivery of these goods to the first independent purchaser occurred not later than the quarter (31 March, 30 June, 30 September, 31 December) following the quarter during which this Regulation entered into force, and
- the products in question were produced by one of the companies listed in the first indent.

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

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 Brussels, 4 March 1991.

For the Council

The President

J. F. POOS

ANNEX I

List of companies affiliated to producers named in the first indent of Article 1 (4) of the Regulation*Companies affiliated to Fujitsu Ltd, Japan :*

- Fujitsu Microelectronics Inc., USA,
- Fujitsu Microelectronics Pacific Asia Ltd, Hong Kong,
- Fujitsu Microelectronics Asia Pte Ltd, Singapore,
- Fujitsu Microelectronics (Malaysia) Sdn Bhd, Malaysia,
- Fujitsu Devices Singapore Pte Ltd, Singapore.

Companies affiliated to Hitachi Ltd, Japan :

- Hitachi America, Ltd, USA,
- Hitachi Semiconductor (America) Inc., USA,
- Hitachi (Canadian) Ltd, Canada,
- Hitachi Asia Pte Ltd, Singapore, Malaysia, Indonesia,
- Hitachi Asia (Hong Kong) Ltd, Hong Kong, South Korea, China, Taiwan,
- Hitachi Semiconductor Technology (Malaysia) Sdn Bhd, Malaysia,
- Hitachi Australia Ltd, Australia,
- Nissei Sangyo Co. Ltd, Japan, Hong Kong, Taiwan, Australia,
- Nissei Sangyo America Ltd, USA,
- Nissei Sangyo (Singapour) Pte Ltd, Singapore,
- Hitachi Micro Devices Ltd, Japan,
- Hitachi Electronic Components Sales Co. Ltd, Japan,
- Hitachi Semiconductor (Malaysia) Sdn Bhd, Malaysia,
- Hitachi Semiconductor (Penang) Sdn Bhd, Malaysia,
- Hitachi Semiconductor (Kedah) Sdn Bhd, Malaysia.

Companies affiliated to Mitsubishi Electric Corporation, Japan :

- Mitsubishi Electronics America Inc., USA,
- Mitsubishi Semiconductor America Inc., USA,
- Mitsubishi Electric (H.K.) Ltd, Hong Kong,
- Melco-Taiwan Co. Ltd, Taiwan,
- Melco Sales Singapour Pte Ltd, Singapore,
- Mitsubishi Electric Australia Pty Ltd, Australia.

Unternehmen der Gruppe Sharp Corporation :

- Sharp Electronics Corporation, USA,
- Sharp Microelectronics Technology, USA,
- Sharp Digital information Products, USA,
- Sharp Electronics of Canada Ltd, Canada,
- Sharp Electronics (Svenska) AB, Sweden,
- Sharp Electronics GmbH, Austria,
- Sharp Electronics AG, Switzerland,
- Sharp-Roxy Sales Pte, Ltd, Singapore,
- Sharp Electronics Pte, Ltd, Singapore,
- Sharp Roxy Sales & Service Company, Malaysia,
- Sharp Roxy Ltd, Hong Kong,
- Sharp Korea Corporation, South Korea,
- Sharp (Phils) Corporation, Philippines,
- Sharp Thebnakorn Co. Ltd, Thailand,
- Sharp Electronics Co. Ltd, Taiwan.

Companies affiliated to Texas Instruments (Japan) Ltd :

- Texas Instruments, Inc., USA,
- Texas Instruments Pte Ltd, Singapore,
- KTI Semiconductor Limited, Japan,
- Texas Instruments International Trade Corp. (Sverigefilialen), Sweden.

Companies affiliated to Toshiba Corporation :

- Toshiba America Electronic Components, Inc., USA,
- Toshiba Electronics Scandinavia AB, Sweden.

Companies affiliated to NEC Corporation :

- NEC Electronics Inc., USA,
- NEC Electronics Pte Ltd, Singapore,
- NEC Electronics Ltd, Hong Kong,
- NEC Electronics Australia Pte Ltd, Australia,
- NEC Semiconductors Sdn Bhd, Malaysia,
- NEC Electronics Taiwan Ltd, Taiwan.

ANNEX II

Taric and additional codes

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

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

CN code	Taric code
ex 8542 11 10	8542 11 10*30
ex 8542 11 30	8542 11 30*50
ex 8542 11 76	8542 11 76*05
	8542 11 76*06
	8542 11 76*07
	8542 11 76*08
	8542 11 76*14
	8542 11 76*15
	8542 11 76*17
	8542 11 76*18
	8542 11 76*20
	8542 11 76*21
	8542 11 76*91

ANNEX III

Certification document pursuant to the third indent of Article 1 (4) of this Regulation

1 Exporter (Name and full address)	DOCUMENTATION FOR IMPORT OF EPROMs IN THE EUROPEAN COMMUNITY		
2 Consignee (Name and full address)	3 ISSUING COMPANY (Name and full address)		
NOTE This documentation must be presented to the competent customs office in the European Community together with the entry for free circulation relating to the products	4 Invoice number(s)		
5 Description of the device type(s)	6 Total quantity per device type	7 Unit price per device type	
8 This is to confirm that the products shown above were produced and sold for export to the European Community by the company shown in box 3 under the undertaking referred to in Regulation (EEC) No 577/91.			
Place and date : Signature : 			
9 For use by competent customs office in the European Community			

COUNCIL REGULATION (EEC) No 578/91

of 4 March 1991

extending the provisional anti-dumping duty on imports of audio tapes in
cassettes originating in Japan, the Republic of Korea, and Hong Kong

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 subsidi-
zied imports from countries not members of the Euro-
pean Economic Community⁽¹⁾, and in particular Article
11 thereof,

Having regard to the Commission proposal,

Whereas Commission Regulation (EEC) No 3262/90⁽²⁾
imposed a provisional anti-dumping duty on imports of
audio tapes in cassettes originating in Japan, the Republic
of Korea, and Hong Kong;

Whereas examination of the facts has not yet been
completed and the Commission has informed the export-
ers known to be concerned of its intention to propose an

extension of the validity of the provisional duty for an
additional period not exceeding two months;

Whereas the exporters have raised no objections,

HAS ADOPTED THIS REGULATION:

Article 1

The validity of the provisional anti-dumping duty on
imports of audio tapes in cassettes originating in Japan,
the Republic of Korea, and Hong Kong imposed by
Regulation (EEC) No 3262/90 is hereby extended for a
period not exceeding two months.

Without prejudice to Article 11 of Regulation (EEC) No
2423/88 or any further Council Decision, it shall apply
until the entry into force of an act of the Council adopt-
ing definitive measures.

Article 2

This Regulation shall enter into force on the day fol-
lowing that of 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, 4 March 1991.

*For the Council**The President*

J. F. POOS

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No L 313, 13. 11. 1990, p. 5.

COMMISSION REGULATION (EEC) No 579/91

of 11 March 1991

fixing the import levies on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 3577/90⁽²⁾, and in particular Article 13 (5) thereof,Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EEC) No 2205/90⁽⁴⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 533/91⁽⁵⁾ and subsequent amending Regulations ;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis :

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent ;

Whereas these exchange rates being those recorded on 8 March 1991 ;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients ;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 533/91 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION :

Article 1

The import levies to be charged on products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 March 1991.

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

Done at Brussels, 11 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.⁽⁵⁾ OJ No L 59, 6. 3. 1991, p. 1.

ANNEX

to the Commission Regulation of 11 March 1991 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)	
CN code	Levy
0709 90 60	135,50 ⁽²⁾ ⁽¹⁾
0712 90 19	135,50 ⁽²⁾ ⁽¹⁾
1001 10 10	198,77 ⁽¹⁾ ⁽⁵⁾
1001 10 90	198,77 ⁽¹⁾ ⁽⁵⁾
1001 90 91	183,82
1001 90 99	183,82
1002 00 00	158,44 ⁽⁶⁾
1003 00 10	153,34
1003 00 90	153,34
1004 00 10	146,79
1004 00 90	146,79
1005 10 90	135,50 ⁽²⁾ ⁽¹⁾
1005 90 00	135,50 ⁽²⁾ ⁽¹⁾
1007 00 90	145,72 ⁽⁴⁾
1008 10 00	62,48
1008 20 00	142,00 ⁽⁴⁾
1008 30 00	71,84 ⁽⁷⁾
1008 90 10	⁽⁷⁾
1008 90 90	71,84
1101 00 00	271,71 ⁽⁸⁾
1102 10 00	235,52 ⁽⁸⁾
1103 11 10	321,61 ⁽⁸⁾
1103 11 90	291,99 ⁽⁸⁾

⁽¹⁾ Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

⁽²⁾ In accordance with Regulation (EEC) No 715/90 the levies are not applied to products imported directly into the French overseas departments, originating in the African, Caribbean and Pacific States or in the 'overseas countries and territories'.

⁽³⁾ Where maize originating in the ACP or OCT is imported into the Community the levy is reduced by ECU 1,81/tonne.

⁽⁴⁾ Where millet and sorghum originating in the ACP or OCT is imported into the Community the levy is applied in accordance with Regulation (EEC) No 715/90.

⁽⁵⁾ Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

⁽⁶⁾ The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 1180/77 (OJ No L 142, 9. 6. 1977, p. 10) and Commission Regulation (EEC) No 2622/71 (OJ No L 271, 10. 12. 1971, p. 22).

⁽⁷⁾ The levy applicable to rye shall be charged on imports of the product falling within CN code 1008 90 10 (triticale).

⁽⁸⁾ On importation into Portugal the levy is increased by the amount specified in Article 2 (2) of Regulation (EEC) No 3808/90.

COMMISSION REGULATION (EEC) No 580/91

of 11 March 1991

fixing the premiums to be added to the import levies on cereals, flour and malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 3577/90 ⁽²⁾, and in particular Article 15 (6) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy ⁽³⁾, as last amended by Regulation (EEC) No 2205/90 ⁽⁴⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 3845/90 ⁽⁵⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central

rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 8 March 1991;

Whereas, on the basis of today's cif prices and cif forward delivery prices, the premiums at present in force, which are to be added to the levies, should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt coming from third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 March 1991.

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

Done at Brussels, 11 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 367, 29. 12. 1990, p. 10.

ANNEX

to the Commission Regulation of 11 March 1991 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(ECU/tonne)

CN code	Current 3	1st period 4	2nd period 5	3rd period 6
0709 90 60	0	6,09	6,09	5,76
0712 90 19	0	6,09	6,09	5,76
1001 10 10	0	1,05	1,05	1,05
1001 10 90	0	1,05	1,05	1,05
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 10	0	0	0	0
1004 00 90	0	0	0	0
1005 10 90	0	6,09	6,09	5,76
1005 90 00	0	6,09	6,09	5,76
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	0

B. Malt

(ECU/tonne)

CN code	Current 3	1st period 4	2nd period 5	3rd period 6	4th period 7
1107 10 11	0	0	0	0	0
1107 10 19	0	0	0	0	0
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

COMMISSION REGULATION (EEC) No 581/91
of 11 March 1991

**changing the consultation level for imports of textile products of category 117
(woven fabrics of flax or ramie) originating in the Union of Soviet Socialist
Republics**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No 1925/90
of 18 June 1990 on common rules for imports of certain
textile products originating in the Union of Soviet Soci-
alist Republics ⁽¹⁾, and in particular Article 10 (3) thereof,

Whereas the first paragraph of Article 10 (3) of Regulation
(EEC) No 1925/90 provides that the consultation levels
set out in Annex III to the said Regulation may be
increased if it appears that additional quantities are
required;

Whereas, in accordance with the provisions of Article 15
of the said Regulation, consultations were held on 22 and
23 October 1990 between delegations representing the
European Economic Community and the USSR with a
view to fixing a new consultation level for textile products
of category 117 for 1990;

Whereas the measures provided for in this Regulation are
in accordance with the opinion of the Textile Committee

set up by Article 15 of Council Regulation (EEC) No
4136/86 of 22 December 1986 ⁽²⁾, as last amended by
Regulation (EEC) No 71/91 ⁽³⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The consultation level for textile products of category 117
originating in the USSR set out in Annex III to Regula-
tion (EEC) No 1925/90 is hereby amended for 1990 as
indicated in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day follo-
wing its publication in the *Official Journal of the Euro-
pean Communities*.

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

Done at Brussels, 11 March 1991.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 177, 10. 7. 1990, p. 1.

⁽²⁾ OJ No L 387, 31. 12. 1986, p. 42.

⁽³⁾ OJ No L 9, 12. 1. 1991, p. 9.

ANNEX

ANNEX III

CONSULTATION LEVELS REFERRED TO IN ARTICLE 3 (1)

GROUP IV

Category No	CN code	Description	Third country	Unit	Member State	Consultation levels (1)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
117	5309 11 11	Woven fabrics of flax or of ramie	USSR	tonnes	D	207
	5309 11 19				F	76
	5309 11 90				I	103
	5309 19 10				BNL	88
	5309 19 90				UK	103
	5309 21 10				IRL	5
	5309 21 90				DK	680
	5309 29 10				EL	9
	5309 29 90				ES	100
					P	9
	5311 00 10				EEC	1 380
	5803 90 90					
	5905 00 31					
	5905 00 39					

(1) Applicable only for 1990.

COMMISSION REGULATION (EEC) No 582/91

of 11 March 1991

on the detailed rules applicable to the sale of cereals and oils and fats held in intervention for non-food demonstration projects and amending Regulation (EEC) No 569/88

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1581/86 of 23 May 1986 laying down general rules for intervention on the market on cereals⁽¹⁾, as last amended by Regulation (EEC) No 2203/90⁽²⁾, and in particular Article 4 (4) thereof,

Having regard to Council Regulation No 724/67/EEC of 17 October 1967 laying down conditions for intervention in respect of oilseeds during the last two months of the marketing year and principles for the disposal of seed bought in by intervention agencies⁽³⁾, as last amended by Regulation (EEC) No 2203/90, and in particular Article 2a (2) thereof,

Having regard to Council Regulation (EEC) No 2754/78 of 23 November 1978 on intervention in the olive oil sector⁽⁴⁾, as last amended by Regulation (EEC) No 2203/90, and in particular Article 2 (1a) thereof,

Whereas, by Regulation (EEC) No 2203/90 the Council introduced arrangements for making cereals and oils and fats held by intervention agencies available on favourable terms for demonstration projects approved by the Commission; whereas the detailed rules for the approval of such demonstration projects and for selling the raw materials required for their execution should be specified;

Whereas two periods during the year should be set for the submission of project proposals to the Commission; whereas the latter will need time to examine the proposals and to hold consultations before deciding whether to approve these projects in accordance with the procedure laid down in Article 8 of Council Regulation (EEC) No 1728/74⁽⁵⁾, as last amended by Regulation (EEC) No 3768/85⁽⁶⁾, and to make available for such projects intervention stocks in accordance with the procedures laid down, according to the circumstances, in Article 26 of Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽⁷⁾, as last amended by Regulation (EEC) No

3577/90⁽⁸⁾, or in Article 38 of Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽⁹⁾, as last amended by Regulation (EEC) No 3577/90; whereas, in some cases, it may be appropriate to consult independent experts in advance; whereas, however, it is necessary in 1991 to provide for an additional period for the submission of projects so as to speed up the implementation of the arrangements;

Whereas, so as to ensure that these arrangements achieve their purpose, namely to find new outlets, the criteria for selecting the demonstration projects submitted for approval should be specified;

Whereas the criteria for setting the selling price for each sector should be laid down in such a way as to ensure that the products are offered on favourable terms whilst at the same time taking account of the other advantages that the interested parties may benefit from under the Community rules in respect of the market organization in question;

Whereas Commission Regulation (EEC) No 569/88 of 16 February 1988 laying down common detailed rules for verifying the use and/or destination of products from intervention⁽¹⁰⁾, as last amended by Regulation (EEC) No 413/91⁽¹¹⁾, applies in respect of such sales and whereas, accordingly, certain additional conditions relating to control measures and the release of securities should be laid down so as to enable the use of the products sold to be verified;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee concerned,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down the detailed rules for sales of cereals, olive oil and oilseeds held in intervention for demonstration projects concerning the development of new uses of these products other than as foodstuffs or animal feedingstuffs.

⁽¹⁾ OJ No L 139, 24. 5. 1986, p. 36.

⁽²⁾ OJ No L 201, 31. 7. 1990, p. 5.

⁽³⁾ OJ No 252, 19. 10. 1967, p. 10.

⁽⁴⁾ OJ No L 331, 28. 11. 1978, p. 13.

⁽⁵⁾ OJ No L 182, 5. 7. 1974, p. 1.

⁽⁶⁾ OJ No L 362, 31. 12. 1985, p. 8.

⁽⁷⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽⁸⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽⁹⁾ OJ No 172, 30. 9. 1966, p. 3025/66.

⁽¹⁰⁾ OJ No L 55, 1. 3. 1988, p. 1.

⁽¹¹⁾ OJ No L 49, 22. 2. 1991, p. 9.

Article 2

The projects referred to in Article 1 shall be proposed and implemented by research institutes, bodies, organizations, undertakings or natural or legal persons which :

- (a) possess the necessary qualifications and experience ;
- (b) provide guarantees regarding the satisfactory outcome of the work.

Article 3

Proposals for demonstration projects shall be presented in accordance with the model in the Annex. They shall contain the following information :

- the full identity, address and professional references of the applicant and any partners,
- the title of the project,
- the objectives, demonstrative value and innovative nature of the project, a description of the work and technical details,
- duration of the project, which may not exceed two years,
- the required quantities of the raw materials referred to in Article 1,
- the derived products and by-products obtained (description, quantity and destination),
- the proposed price of the raw material (and justification), taking account of the value of the co-products and by-products,
- the likely schedule for removal,
- the proposed place where the products will be taken over,
- other national or Community assistance already granted for the project,
- all other information useful to the assessment referred to in Article 5.

Article 4

Proposals for demonstration projects shall be submitted to the Commission for approval in June and December of each year.

The Commission shall, according to the procedure provided for by the Council, and after consulting independent experts where necessary, decide to approve projects before 31 December in the case of proposals submitted during June of the same year, and before 30 June in the case of proposals submitted during December of the previous year.

However, for 1991, proposals may be submitted also in March, the Commission decision on which shall be taken before 30 September.

Article 5

The decision approving projects shall be based on an assessment comprising, in particular, the following selection criteria :

- demonstrative value,
- innovative nature,
- technical feasibility,
- agro-industrial impact,
- impact of the end products, co-products and by-products on competing markets and the danger of market disruption,
- economic viability,
- available financial resources,
- environmental aspects.

Article 6

Selling prices shall be fixed :

- for cereals and olive oil : at a level similar to the world market price cif stage for the same products, taking account of the value of the by-products,
- for oilseeds : at a level likely to allow the operation to be carried out without endangering market equilibrium,

taking account, where appropriate, of other advantages which interested parties may benefit from under the Community rules in respect of the market organizations in question.

Article 7

The Commission shall, in its decision approving each selected project, specify the selling prices, the quantities to be sold, the amount of the guarantee referred to in Article 8 (1) and other conditions of sale, in particular the schedule for removal which may not exceed one year.

Article 8

1. A performance guarantee shall be lodged with the competent body before each instalment is removed.

The guarantee shall amount, per tonne, to 110 % of the difference between the intervention price and the selling price applicable to the instalment of goods in question.

2. The use of the products made available for the purposes of the approved project shall constitute a primary requirement within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 ⁽¹⁾.

3. The guarantee shall be released when proof is furnished that the product has actually been used for the purposes of the project, in the form of a report approved by the Commission.

This report must contain detailed information showing that the objectives of the project have been attained, based on quantitative and qualitative data relating to each objective.

⁽¹⁾ OJ No L 205, 3. 8. 1985, p. 5.

4. For the purposes of the approval referred to in paragraph 3, the report shall be submitted to the competent body, not later than two months after completion of the project. The competent body shall transmit it to the Commission without delay.

The Commission shall approve the report not later than two months after receiving it and shall inform the competent body.

Article 9

1. The competent body shall take the necessary steps to ensure, particularly by means of technical, administrative and documentary checks during the processing period, that the intervention product is used in accordance with the terms of the project. It shall inform the Commission of the measures taken and the envisaged schedule of checks. It shall attach a report on the checks carried out and their findings to the report provided for in Article 8 (3).

In the case of irregularities, it shall immediately inform the Commission and shall appropriate the guarantee.

2. In the cases referred to in Article 2 (3) of Regulation (EEC) No 569/88, intervention products shall be accompanied by the control copy T5; when the products are dispatched, the control copy shall include the following endorsements:

in Section 104:

— 'Intended for non-food demonstration project — Regulation (EEC) No 582/91',

in Section 106:

— the latest date for completion of the project.

Article 10

The following point 37 and corresponding footnote are added in Part II, 'Products subject to a use and/or destination other than that mentioned under I', of the Annex to Regulation (EEC) No 569/88:

'37. Commission Regulation (EEC) No 582/91 of 11 March 1991 on the detailed rules applicable to the sale of cereals and oils and fats held in intervention for non-food demonstration projects and amending Regulation (EEC) No 569/88 ⁽³⁷⁾:

On the dispatch of intervention products:

Section 104 of the control copy T5:

— Intended for a non-food demonstration project — Regulation (EEC) No 582/91,

Section 106 of the control copy T5:

— the latest date for completion of the project in question.

⁽³⁷⁾ OJ No L 65, 12. 3. 1991, p. 27.'

Article 11

This Regulation shall enter into force on the day of 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, 11 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

*ANNEX***I. GENERAL INFORMATION****1. Identification of applicant**

Name or business name :

Place of establishment in Member State :

Address :

Telephone :

Telex :

Telefax :

2. Partners

Name or business name :

Main activity :

Member State :

3. Professional references of the applicant and any partners**4. Title of project**

Objectives, demonstrative value and innovative nature of project and its background :

Tasks to be carried out by partners :

Duration of project (maximum two years) :

Raw material (description and quantity) :

Derived products and by-products (description, quantity and destination) :

Proposed price of raw material and justification, taking account of the value of the co-products and by-products :

Likely schedule for removal from intervention :

Place where products will be taken over :

Other assistance already granted in respect of project :

Date

(signature) ⁽¹⁾

⁽¹⁾ Of the applicant.

II. DESCRIPTION OF THE PROJECT

A project must contain at least the following information :

1. a summary of the project (not more than two pages);
2. reasons for the project and objectives;
3. the measures or operations proposed;
4. the successive stages of implementation, the schedule and place of implementation;
5. the economic impact of the project (agriculture, industry, market);
6. the expected results and advantages for the Community market;
7. the criteria for assessing the results on completion of the project;
8. prospects for exploiting and disseminating the results;
9. environmental impact.

III. BUDGET

The net budget, excluding tax, envisaged for the project, expressed in national currency, showing the annual allocation of the amount; amount of the budget corresponding to the price of the raw material and the prices of the derived products and by-products.

IV. ADDRESSEE

The project should be sent to the following address :

Commission of the European Communities,
Directorate-General for Agriculture,
Division VI-C-2, 'Animal feed, non-food uses and cereal substitutes', rue de la Loi 200, B-1049 Brussels.

COMMISSION REGULATION (EEC) No 583/91

of 11 March 1991

amending Regulation (EEC) No 3744/87 laying down detailed rules for the supply of food from intervention stocks to designated organizations for distribution to the most deprived persons in the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3730/87 of 10 December 1987 laying down the general rules for the supply of food from intervention stocks to designated organizations for distribution to the most deprived persons in the Community ⁽¹⁾, and in particular Article 6 thereof,

Whereas, pursuant to Article 1 (2) of Commission Regulation (EEC) No 3744/87 ⁽²⁾, as last amended by Regulation (EEC) No 2736/89 ⁽³⁾, the list of intervention products which are available for distribution was extended to include milk powder and rice; whereas, pursuant to Article 7 of the same Regulation, the costs of transport which may be reimbursed in respect of these products whenever they are not available from intervention stock on the territory of a Member State should, therefore, be included in Annex II;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II of Regulation (EEC) No 3744/87 is hereby replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of 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, 11 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 352, 15. 12. 1987, p. 1.

⁽²⁾ OJ No L 352, 15. 12. 1987, p. 33.

⁽³⁾ OJ No L 263, 9. 9. 1989, p. 19.

*ANNEX***TRANSPORT COSTS****Beef and butter**

- For the first 200 kilometres ECU 20,00/tonne,
- For each additional kilometre over 200 ECU 0,05/tonne ;

Cereals and rice

- For the first 200 kilometres ECU 5,50/tonne,
- For each additional kilometre over 200 ECU 0,02/tonne ;

Olive oil

- For the first 200 kilometres ECU 20,00/tonne,
- For each additional kilometre over 200 ECU 0,04/tonne ;

Milk powder

- For the first 200 kilometres ECU 10,00/tonne,
 - For each additional kilometre over 200 ECU 0,04/tonne.
-

COMMISSION REGULATION (EEC) No 584/91

of 11 March 1991

amending Regulation (EEC) No 598/86 concerning the target ceiling for 1991 for imports into Spain of common wheat of bread-making quality

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 85 (3) thereof,

Having regard to Council Regulation (EEC) No 569/86 of 25 February 1986 laying down general rules for the application of the supplementary mechanism applicable to trade ⁽¹⁾, as last amended by Regulation (EEC) No 3296/88 ⁽²⁾, and in particular Article 7 (1) thereof,

Whereas Commission Regulation (EEC) No 598/86 of 28 February 1986 on the application of the supplementary trade mechanism to imports into Spain of common wheat of bread-making quality from the Community as constituted at 31 December 1985 ⁽³⁾, as last amended by Regulation (EEC) No 262/91 ⁽⁴⁾, sets a target ceiling for 1991 for imports of common wheat of bread-making quality into Spain ;

Whereas, on the basis of Article 6 (2) of Commission Regulation (EEC) No 574/86 of 28 February 1986 laying down detailed rules for the application of the supplementary trade mechanism (STM) ⁽⁵⁾, as last amended by Regulation (EEC) No 3296/88 the Commission has been notified on 4 February 1991 of applications received for STM licences for imports into Spain of common wheat of bread-making quality which are well in excess of the ceiling set ; whereas measures were taken by Commission Regulation (EEC) No 312/91 of 8 February 1991 concerning applications for STM licences for cereals

submitted from 4 February 1991 onwards for imports of common wheat into Spain ⁽⁶⁾ ;

Whereas, in the present situation on the market for common wheat of bread-making quality in Spain, a feature of which is limited supply compared with demand, provision should be made for an increase in the target ceiling for the current marketing year in order to ensure normal supply to the market ;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION :

Article 1

In Article 4 of Regulation (EEC) No 598/86, the figure '402 000' is replaced by the figure '452 000'.

Article 2

Article 1 (2) of Regulation (EEC) No 312/91 is hereby deleted.

Article 3

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

This Regulation shall apply to applications for licences submitted from the date of entry into force.

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

Done at Brussels, 11 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 55, 1. 3. 1986, p. 106.

⁽²⁾ OJ No L 293, 27. 10. 1988, p. 7.

⁽³⁾ OJ No L 58, 1. 3. 1986, p. 16.

⁽⁴⁾ OJ No L 27, 1. 2. 1991, p. 109.

⁽⁵⁾ OJ No L 57, 1. 3. 1986, p. 1.

⁽⁶⁾ OJ No L 37, 9. 2. 1991, p. 16.

COMMISSION REGULATION (EEC) No 585/91

of 11 March 1991

on the issue of import licences for high-quality fresh, chilled or frozen beef and veal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3840/90 of 20 December 1990 opening a Community tariff quota for high-quality fresh, chilled or frozen meat of bovine animals falling within CN codes 0201 and 0202 and for products falling within CN codes 0206 10 95 and 0206 29 91 (1991) ⁽¹⁾, and in particular Article 2 thereof,

Whereas Commission Regulation (EEC) No 3884/90 of 27 December 1990 laying down detailed rules for the application of import arrangements provided for by Council Regulations (EEC) No 3840/90 and (EEC) No 3841/90 in the beef and veal sectors ⁽²⁾ provides in Article 7, that applications for and the issue of import licences for the meat referred to in Article 1 (1) (d) thereof are to be effected in accordance with the provisions of Articles 12 and 15 of Commission Regulation (EEC) No 2377/80 of 4 September 1980 on special detailed rules for the application of the system of import and export licences in the beef and veal sector ⁽³⁾, as last amended by Regulation (EEC) No 211/91 ⁽⁴⁾;

Whereas Article 1 (1) (d) of Regulation (EEC) No 3884/90 fixes the amount of high-quality fresh, chilled or frozen

beef and veal originating in and imported from the United States of America and Canada which may be imported on special terms in 1991 at 10 000 tonnes;

Whereas it should be recalled that licences issued pursuant to this Regulation will, throughout the period of validity, be open for use only in so far as provisions on health protection in force permit,

HAS ADOPTED THIS REGULATION:

Article 1

1. All applications for import licences from 1 until 5 March 1991 for high-quality fresh, chilled or frozen beef and veal as referred to in Article 1 (1) (d) of Regulation (EEC) No 3884/90 shall be met in full.

2. Applications for licences may be submitted, in accordance with Article 12 of Regulation (EEC) No 2377/80, during the first five days of April 1991 for 3 324,25 tonnes.

Article 2

This Regulation shall enter into force on 12 March 1991.

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

Done at Brussels, 11 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 367, 29. 12. 1990, p. 6.

⁽²⁾ OJ No L 367, 29. 12. 1990, p. 129.

⁽³⁾ OJ No L 241, 13. 9. 1980, p. 5.

⁽⁴⁾ OJ No L 24, 30. 1. 1991, p. 11.

COMMISSION REGULATION (EEC) No 586/91
of 11 March 1991
altering the export refunds on milk and milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European
Economic Community,

Having regard to the Act of Accession of Spain and
Portugal,

Having regard to Council Regulation (EEC) No 804/68 of
27 June 1968 on the common organization of the market
in milk and milk products ⁽¹⁾, as last amended by
Regulation (EEC) No 3641/90 ⁽²⁾, and in particular Article
17 (5) thereof,

Whereas the export refunds on milk and milk products
were fixed by Commission Regulation (EEC) No
502/91 ⁽³⁾;

Whereas it follows from applying the detailed rules
contained in Regulation (EEC) No 502/91 to the

information known to the Commission that the export
refunds should be altered,

HAS ADOPTED THIS REGULATION:

Article 1

In Annex I to Regulation (EEC) No 502/91 the amount
of '212,00 ("')' given for destination 056 for product code
0405 00 10 700 is replaced by '198,00 ("')'.

Article 2

This Regulation shall enter into force on 12 March 1991.

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

Done at Brussels, 11 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 362, 27. 12. 1990, p. 5.

⁽³⁾ OJ No L 55, 1. 3. 1991, p. 74.

COMMISSION REGULATION (EEC) No 587/91**of 11 March 1991****amending Regulation (EEC) No 4026/89 laying down detailed rules for the application of the supplementary trade mechanism in the beef and veal sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Articles 83 (1) and 85 (3) thereof,

Having regard to Council Regulation (EEC) No 569/86 of 25 February 1986 laying down general rules for the application of the supplementary mechanism applicable to trade (STM) ⁽¹⁾, as last amended by Regulation (EEC) No 3296/88 ⁽²⁾, and in particular Article 7 (1) thereof,

Whereas Commission Regulation (EEC) No 4026/89 ⁽³⁾, as last amended by Regulation (EEC) No 3690/90 ⁽⁴⁾, sets the indicative ceilings referred to in Article 83 of the Act of Accession;

Whereas applications for STM licences lodged in the week 11 to 15 February 1991 for fresh or chilled meat relate to quantities exceeding the fraction of the indicative ceiling applicable for the first quarter of 1991;

Whereas the Commission accordingly adopted, by an emergency procedure, appropriate interim protective measures by Regulation (EEC) No 416/91 ⁽⁵⁾; whereas those measures entail in particular the suspension of the issue of STM licences; whereas those measures were stipulated in Regulation (EEC) No 540/91 ⁽⁶⁾; whereas definitive measures should be taken for the first quarter; whereas, in view of the situation of the market in Spain, the indicative ceiling for fresh or chilled meat should be raised by adjusting the quarterly breakdown of the latter;

Whereas, in addition, in view of experience gained, provision should be made for the possibility of adding to the quantity for one quarter the quantity outstanding from the preceding quarter in respect of each product;

Whereas the measures provided for in this Regulation are in accordance with the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 4026/89 is hereby amended as follows:

1. The words 'between the Community as constituted at 31 December 1985 and Spain' are added to the title of the Regulation.
2. The following is added to the first paragraph of Article 1:
'If, in the course of one calendar year, the total quantity in respect of which applications have been lodged during one quarter is less than the ceiling laid down for that quarter, the quantity outstanding may be added to the ceiling for the following quarter.'
3. The Annex is replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on the day of 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, 11 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 55, 1. 3. 1986, p. 106.

⁽²⁾ OJ No L 293, 27. 10. 1988, p. 7.

⁽³⁾ OJ No L 382, 30. 12. 1989, p. 62.

⁽⁴⁾ OJ No L 357, 30. 12. 1990, p. 27.

⁽⁵⁾ OJ No L 49, 22. 2. 1991, p. 16.

⁽⁶⁾ OJ No L 59, 6. 3. 1991, p. 17.

ANNEX

Group	CN code	Description	Indicative ceiling 1991
1	0102 90	Live animals of the bovine species other than pure-bred breeding animals and animals for bullfights (head)	120 000 head of which 1st quarter: 42 000 2nd quarter: 24 000 3rd quarter: 24 000 4th quarter: 30 000
2	0201 10 0201 20	— Meat of animals of the bovine species, fresh or chilled, bone in	24 000 tonnes of which 1st quarter: 6 000 2nd quarter: 6 000 3rd quarter: 6 000 4th quarter: 6 000
3	0201 30	— Meat of animals of the bovine species, fresh or chilled, boneless (tonnes equivalent carcase weight)	

COMMISSION REGULATION (EEC) No 588/91
of 11 March 1991
fixing the amount of the subsidy on oil seeds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 3577/90⁽²⁾, and in particular Article 27 (4) thereof,

Having regard to Council Regulation (EEC) No 1678/85 of 11 June 1985 fixing the conversion rates to be applied in agriculture⁽³⁾, as last amended by Regulation (EEC) No 550/91⁽⁴⁾,

Having regard to Council Regulation (EEC) No 1569/72 of 20 July 1972 laying down special measures for colza, rape and sunflower seed⁽⁵⁾, as last amended by Regulation (EEC) No 2206/90⁽⁶⁾, and in particular Article 2 (3) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the amount of the subsidy referred to in Article 27 of Regulation No 136/66/EEC was fixed by Commission Regulation (EEC) No 3866/90⁽⁷⁾, as last amended by Regulation (EEC) No 538/91⁽⁸⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 3866/90 to the information known to the Commission that the amount of the subsidy at present in force should be altered to the amount set out in the Annexes hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The amount of the subsidy and the exchange rate referred to in Article 33 (2) and (3) of Commission Regulation (EEC) No 2681/83⁽⁹⁾ are as set out in the Annexes hereto.

Article 2

This Regulation shall enter into force on 12 March 1991.

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

Done at Brussels, 11 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 11.

⁽⁴⁾ OJ No L 64, 11. 3. 1991, p. 51.

⁽⁵⁾ OJ No L 167, 25. 7. 1972, p. 9.

⁽⁶⁾ OJ No L 201, 31. 7. 1990, p. 11.

⁽⁷⁾ OJ No L 367, 29. 12. 1990, p. 80.

⁽⁸⁾ OJ No L 59, 6. 3. 1991, p. 13.

⁽⁹⁾ OJ No L 266, 28. 9. 1983, p. 1.

ANNEX I

Aids to colza and rape seed other than 'double zero'

(amounts per 100 kg)

	Current 3	1st period 4	2nd period 5	3rd period 6	4th period 7	5th period 8
1. Gross aids (ECU):						
— Spain	0,000	0,000	0,000	0,000	—	—
— Portugal	27,646	27,724	27,542	27,532	—	—
— Other Member States	20,676	20,754	20,572	20,562	—	—
2. Final aids:						
Seed harvested and processed in:						
— Federal Republic of Germany (DM)	48,68	48,86	48,43	48,41	—	—
— Netherlands (Fl)	54,84	55,05	54,57	54,54	—	—
— BLEU (Bfrs/Lfrs)	1 003,95	1 007,74	998,90	998,41	—	—
— France (FF)	163,25	163,87	162,43	162,35	—	—
— Denmark (Dkr)	185,67	186,37	184,73	184,64	—	—
— Ireland (£ Irl)	18,170	18,238	18,078	18,069	—	—
— United Kingdom (£)	15,818	15,875	15,724	15,712	—	—
— Italy (Lit)	36 420	36 557	36 237	36 218	—	—
— Greece (Dr)	4 204,52	4 195,74	4 103,54	4 062,84	—	—
— Spain (Pta)	0,00	0,00	0,00	0,00	—	—
— Portugal (Esc)	5 814,05	5 830,91	5 790,93	5 778,37	—	—

ANNEX II

Aids to colza and rape seed 'double zero'

(amounts per 100 kg)

	Current 3	1st period 4	2nd period 5	3rd period 6	4th period 7	5th period 8
1. Gross aids (ECU):						
— Spain	0,986	1,064	0,882	0,872	—	—
— Portugal	30,146	30,224	30,042	30,032	—	—
— Other Member States	23,176	23,254	23,072	23,062	—	—
2. Final aids:						
Seed harvested and processed in:						
— Federal Republic of Germany (DM)	54,56	54,74	54,32	54,29	—	—
— Netherlands (Fl)	61,48	61,68	61,20	61,17	—	—
— BLEU (Bfrs/Lfrs)	1 125,34	1 129,13	1 120,29	1 119,81	—	—
— France (FF)	182,99	183,60	182,17	182,09	—	—
— Denmark (Dkr)	208,12	208,82	207,18	207,09	—	—
— Ireland (£ Irl)	20,367	20,435	20,275	20,266	—	—
— United Kingdom (£)	17,767	17,824	17,673	17,661	—	—
— Italy (Lit)	40 823	40 961	40 640	40 621	—	—
— Greece (Dr)	4 761,78	4 753,00	4 660,81	4 620,10	—	—
— Spain (Pta)	242,92	255,76	226,87	218,33	—	—
— Portugal (Esc)	6 335,74	6 352,60	6 312,62	6 300,06	—	—

ANNEX III

Aids to sunflower seed

(amounts per 100 kg)

	Current 3	1st period 4	2nd period 5	3rd period 6	4th period 7
1. Gross aids (ECU):					
— Spain	30,479	30,614	30,514	30,268	30,126
— Portugal	39,401	39,539	39,447	39,206	39,066
— Other Member States	27,161	27,299	27,207	26,966	26,826
2. Final aids:					
(a) Seed harvested and processed in (1):					
— Federal Republic of Germany (DM)	63,94	64,27	64,05	63,48	63,15
— Netherlands (Fl)	72,05	72,41	72,17	71,53	71,16
— BLEU (Bfrs/Lfrs)	1 318,84	1 325,54	1 321,07	1 309,37	1 302,57
— France (FF)	214,45	215,54	214,82	212,91	211,81
— Denmark (Dkr)	243,90	245,14	244,32	242,15	240,89
— Ireland (£ Irl)	23,868	23,990	23,909	23,697	23,574
— United Kingdom (£)	20,857	20,961	20,881	20,684	20,572
— Italy (Lit)	47 843	48 086	47 924	47 498	47 251
— Greece (Dr)	5 628,00	5 631,88	5 559,27	5 456,75	5 420,40
— Portugal (Esc)	8 267,24	8 296,57	8 275,21	8 215,03	8 186,16
(b) Seed harvested in Spain and processed:					
— in Spain (Pta)	4 739,76	4 761,17	4 745,10	4 702,68	4 681,59
— in another Member State (Pta)	4 795,98	4 817,92	4 803,09	4 761,49	4 740,78

(1) For seed harvested in Member States other than Spain and processed in Spain, the amounts shown in 2 (a) to be multiplied by 1,0186140.

ANNEX IV

Exchange rate of the ecu to be used for converting final aids into the currency of the processing country when the latter is a country other than the country of production

(value of ECU 1)

	Current 3	1st period 4	2nd period 5	3rd period 6	4th period 7	5th period 8
DM	2,050460	2,048040	2,046030	2,044090	2,044090	2,038730
Fl	2,310380	2,307530	2,305050	2,302810	2,302810	2,296690
Bfrs/Lfrs	42,226100	42,183100	42,144800	42,109100	42,109100	42,014600
FF	6,983100	6,976070	6,970560	6,965970	6,965970	6,955200
Dkr	7,878910	7,875680	7,874450	7,873510	7,873510	7,867000
£Irl	0,768990	0,769246	0,770167	0,770661	0,770661	0,773190
£	0,702909	0,704488	0,705652	0,706669	0,706669	0,708829
Lit	1 532,16	1 535,15	1 537,60	1 539,90	1 539,90	1 547,31
Dr	220,97700	223,61900	226,30400	228,97300	228,97300	236,05800
Esc	179,22800	179,71300	180,35200	181,03200	181,03200	183,16800
Pta	127,70300	128,15100	128,51000	128,85600	128,85600	129,80800

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 March 1991

accepting undertakings offered by certain exporters in connection with the anti-dumping proceeding concerning imports of certain types of electronic microcircuits known as EPROMs (erasable programmable read only memories) originating in Japan and terminating the investigation with regard to these exporters

(91/131/EEC)

THE COMMISSION 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 10 thereof,

After consultation within the Advisory Committee as provided for in the above Regulation,

Whereas :

A. PROCEDURE

- (1) In December 1986, the Commission received a complaint lodged by the European Electronic Component Manufacturers' Association (EECA) allegedly on behalf of practically all actual or potential Community producers of EPROMs (erasable programmable read only memories). The complaint contained evidence of dumping of EPROMs originating in Japan and of substantial injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88 resulting therefrom. This evidence was considered sufficient to justify the initiation of a proceeding.

- (2) The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of certain types of electronic micro-circuits known as EPROMs, falling at the time of initiation within subheading ex 85.21 D of the Common Customs Tariff and corresponding to NIMEXE codes ex 85.21-47, ex 85.21-69 and ex 85.21-71, originating in Japan and commenced an investigation.

B. PRICE UNDERTAKINGS

- (3) The following exporters, namely Fujitsu Ltd, Hitachi Ltd, Mitsubishi Electric Corp., NEC Corp., Sharp Corp., Texas Instruments Japan Ltd and Toshiba Corp., upon a suggestion made by the Commission in accordance with Article 10 (3) of Regulation (EEC) No 2423/88, offered undertakings concerning their exports of EPROMs to the Community.
- (4) The Commission considers that price undertakings by the Japanese exporters involved would be the most appropriate measure in this case since they could incorporate the necessary conditions to provide the required flexibility. The effect of the said undertakings will be to ensure that sales prices in the Community do not fall below a certain reference price level considered adequate to eliminate to a satisfactory extent the injury caused to the complainant companies, due consideration being

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 101, 14. 4. 1987, p. 10.

given to the exporters' costs of production. The reference price level will be determined quarterly on the basis of constructed values. In addition, the correct operation of the undertakings can be effectively monitored.

- (5) In these circumstances, the undertakings offered are considered acceptable and the investigation may, therefore be terminated in so far as these exporters are concerned.
- (6) Should these undertakings not be respected and withdrawn by the Commission, or should they be denounced by an exporter concerned, the Commission may, in accordance with Article 10 (6) of Regulation (EEC) No 2423/88, immediately impose a provisional duty and the Council may impose subsequently a definitive duty on the basis of the findings and conclusions of the investigation referred to in Council Regulation (EEC) No 577/91 ⁽¹⁾.
- (7) Objections to this course of action were raised in the Advisory Committee by two Member States. Therefore, in conformity with the provisions of Articles 10 (1) and 9 (1) of Regulation (EEC) No 2423/88, the Commission submitted to the Council a report on the results of the consultation, together with a proposal that the undertakings be accepted and the investigation be terminated. As the Council

has not decided otherwise within one month, the Commission can adopt the present Decision,

HAS DECIDED AS FOLLOWS:

Article 1

The undertakings offered by Fujitsu Ltd, Hitachi Ltd, Mitsubishi Electric Corp., NEC Corp., Sharp Corp., of Japan, Texas Instruments Japan Ltd and Toshiba Corp. in connection with the anti-dumping proceeding concerning imports of certain types of microcircuits known as EPROMs falling within CN code ex 8542 11 10, ex 8542 11 30, 8542 11 63, 8542 11 65, or 8542 11 66, ex 8542 11 76 and originating in Japan, are hereby accepted.

Article 2

The investigation in connection with the anti-dumping proceeding referred to in Article 1 is hereby terminated in respect of the companies named in that Article.

Done at Brussels, 11 March 1991.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ See page 1 of this Official Journal.