COMMISSION DECISION

of 12 October 1992

accepting an undertaking in connection with the anti-dumping proceeding concerning imports on certain types of electronic microcircuits known as DRAMs (dynamic random access memories) originating in Japan, and terminating the investigation with regard to the producer in question

(92/494/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 consultations within the Advisory Committee as provided under by the above Regulation,

Whereas :

I. PREVIOUS PROCEDURE

(1) The Commission, by Regulation (EEC) No 165/90 [2], accepted undertakings offered by certain producing companies in connection with the anti-dumping proceeding concerning imports of certain types of electronic microcircuits known as DRAMs (dynamic random access memories) originating in Japan. Subsequently, the Council, by Regulation (EEC) No 2112/90 [3] as amended by Regulation (EEC) No 3049/90 [4], imposed a definitive anti-dumping duty on imports of the product concerned.

(2) The undertakings offered by the producing companies concerned and accepted by the Commission have the effect of ensuring that these producers' DRAM sales prices in the Community do not fall below a certain reference price level which is considered adequate to eliminate to a satisfactory extent the material injury caused to the complainant companies. The reference prices are adjusted quarterly on the basis of a formula contained in the undertakings and the production costs of all producing companies from which undertakings have been accepted.

II. PRODUCT CONCERNED

(3) The products concerned are certain types of electronic microcircuits known as DRAMs as defined in Regulation (EEC) No 2112/90.

Finished DRAMs fall within CN codes 8542 11 12, 8542 11 14, 8542 11 16 and 8542 11 18, DRAM wafers within CN code ex 8542 11 01, DRAM dice within CN code ex 8542 11 05 (chips), and memory boards (modules) within CN codes ex 8473 30 10 or ex 8548 00 00.

III. REVIEW PROCEDURE

(4) By a notice published on 25 February 1992 [5] the Commission, after consultation within the Advisory Committee, and in accordance with Article 14 of Regulation (EEC) No 2423/88 initiated a partial review of Regulation (EEC) No 2112/90 with regard to DRAMs produced in Japan by Motorola Incorporated (Motorola).

(5) In the framework of the investigation conducted the Commission sought and verified all information it deemed to be necessary for the purposes of this proceeding and carried out an investigation at the premises of the following producer in Japan :

— Tohoku Semiconductor Corporation (TSC), Sendai, Japan (a joint venture company owned by Motorola and Toshiba).

(6) The period of investigation of the partial review was 1 July to 31 December 1991.

IV. RESULTS OF THE INVESTIGATION

(7) The investigation showed that Motorola started commercial production of DRAMs in Japan in the framework of its joint venture, TSC, in October 1988, i.e. after the initial period of investigation (1 April 1986 to 31 March 1987). It was furthermore established that in the framework of the joint venture the available production capacity of the joint-venture company TSC is allocated in equal parts to the parent companies according to their individual product requirements on the basis of regular projections.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 20, 25. 1. 1990, p. 5.
[3] OJ No L 193, 25. 7. 1990, p. 1.
[4] OJ No L 292, 24. 10. 1990, p. 16.
[5] OJ No C 50, 25. 2. 1992, p. 3.

(8) In addition, the investigation revealed that Motorola did not export any of the DRAMs produced in the framework of its joint-venture company TSC to the Community during the period of investigation in the present review proceeding.

(9) Finally, it was established that the normal value for the producer concerned is not lower than the undertaking reference price as calculated for the other Japanese producers during the period of investigation.

(10) No new investigation was carried out as regards injury since it was neither requested nor considered appropriate.

V. UNDERTAKINGS

(11) On the basis of the results of the investigation it is considered appropriate that the offer of an undertaking by Motorola which is identical to that of the other Japanese producers should be accepted by the Commission. Indeed any other decision could be considerd discriminatory for either Motorola or the other Japanese producers.

(12) The complainants and Motorola were informed of the essential facts and considerations, in particular about the calculation of the normal value, on the basis of which the Commission intended to accept the undertaking offered by Motorola and were given every opportunity to comment.

(13) No comment was received in this respect.

(14) Should this undertaking be withdrawn by the producer concerned or should the Commission have reason to believe it has been infringed, the Commission could, in accordance with Article 10 (6) of Regulation (EEC) No 2423/88, immediately impose a provisional duty on the basis of the results and conclusions of the investigation carried out in the framework of this review proceeding. Subsequently, a definitive duty could also be imposed by the Council on the basis of the information gathered in this investigation.

(15) The Advisory Committee was consulted on the acceptance of the undertaking offered and no objections were raised.

(16) Since the present review relates only to the circumstances of one producer in Japan, the measures contained in Regulations (EEC) No 165/90 and (EEC) No 2112/90 referred to above are not being amended or confirmed within the meaning of Article 15 (1) of Regulation (EEC) No 2423/88 and consequently the date on which they were due to expire pursuant to that provision remains unchanged,

HAS DECIDED AS FOLLOWS:

Article 1

The undertaking offered by Motorola Incorporated in connection with the anti-dumping proceeding concerning imports on certain types of electronic microcircuits known as DRAMs (dynamic random access memories) originating in Japan is hereby accepted.

This acceptance shall take effect on the date of entry into force of Council Regulation (EEC) No 2967/92 [1], amending Regulation (EEC) No 2112/90.

Article 2

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

Done at Brussels, 12 October 1992.

For the Commission

Jean DONDELINGER

Member of the Commission

[1] See page 4 of this Official Journal.