II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 18 October 1993

accepting an undertaking in connection with the anti-dumping proceeding concerning imports of certain types of electronic micro-circuits known as Eproms (erasable programmable read only memories) originating in Japan

(93/538/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 Articles 10 and 14 thereof,

After consultations within the Advisory Committee as provided for by the above Regulation (EEC) No 2423/88,

Whereas :

I. Previous investigation

(1) The Council, by Regulation (EEC) No 577/91 [2], imposed a definitive anti-dumping duty on imports of certain types of electronic micro-circuits known as Eproms (erasable programmable read only memories) originating in Japan, and the Commission, by Decision 91/131/EEC [3], accepted undertakings offered by certain producing companies in connection with that anti-dumping proceeding.

(2) The undertakings have the effect of ensuring that those producers' Eprom sales prices in the Community do not fall below a certain level which is considered adequate to eliminate to a satisfactory extent the material injury which was caused to the complainant companies by dumped imports of Japanese origin. The 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 by the proceeding

(3) The review investigation covered Eproms as defined in Regulation (EEC) No 577/91.

III. Review investigation

(4) In July 1992 the Commission, in accordance with Article 14 of Regulation (EEC) No 2423/88 initiated [4] a partial review of Regulation (EEC) No 577/91 with regard to Eproms produced in Japan under an agreement between Intel Corporation (hereinafter 'Intel') and Nippon Steel Semiconductor (hereinafter 'NPNX') [5] after the companies had provided sufficient evidence that they qualified for the newcomer status.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 65, 12. 3. 1991, p. 1.
[3] OJ No L 65, 12. 3. 1991, p. 42.
[4] OJ No C 181, 17. 7. 1992, p. 7.
[5] Intel initially concluded its subcontracting agreement with NMB Semiconductor Co., Ltd, but this company was renamed NPNX after it was taken over in March 1993 by Nippon Steel Corporation, Tokyo, Japan. The agreement with Intel has not been altered by these changes.

(5) In the investigation 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 company in Japan :

— NPNX, Tateyama.

IV. Results of the investigation

(6) The investigation showed that Intel and NPNX had concluded their agreement in March 1991 and started commercial production of Eproms in Japan on the basis of that agreement in the first half of 1993, i.e. after the initial period of investigation (from 1 April 1986 to 31 March 1987). It was furthermore established that, under the agreement between Intel and NPNX, the latter's total output was sold to Intel and that Intel had full control of the output of the product concerned.

(7) In addition, the investigation revealed that Intel had not exported any of the Eproms produced under its agreement with NPNX to the Community during the period of investigation in the present review but had the firm intention of doing so once the undertaking it offered to the Commission was accepted.

(8) During the investigation in the present review, Intel informed the Commission that it had concluded an agreement, similar to the agreement between Intel and NPNX, with Sharp Corporation, Japan ('Sharp'). The agreement had been concluded after Intel had submitted its request for review. Sharp is one of the companies from which undertakings in the initial proceeding had been accepted.

Intel submitted detailed information on that agreement, showing that the agreement between Intel and Sharp is similar to the agreement between Intel and NPNX in its provisions concerning technology transfer, control of production and marketing of the product concerned.

(9) Given the nature of the production agreements concluded with NPNX and Sharp, the Commission concluded that Intel could be considered the producer of the products concerned.

(10) With respect to the normal value of Intel's products, it was established, by applying, during the period of investigation, the same methodology as for the other Japanese producers, that it was not lower than the undertaking price.

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

V. Undertakings

(12) On the basis of the results of the investigation, it is considered appropriate that the offer of an undertaking by Intel along the lines of that of the other Japanese producers should be accepted by the Commission. Indeed, any other decision could be considered discriminatory for either Intel or the other Japanese producers.

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

(14) No comment was received in this respect.

(15) Should the undertaking be withdrawn by the producer concerned or should the Commission have reason to believe it has been violated, the Commission could, pursuant to 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 the proceeding. Subsequently, a definitive duty could also be imposed by the Council on the basis of the information gathered during the investigation.

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

(17) Since the present review relates only to the circumstances of one producer in Japan, the measures contained in Regulation (EEC) No 577/91 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 :

Sole Article

The undertaking offered by Intel Corporation in connection with the anti-dumping proceeding concerning imports of certain types of electronic micro-circuits known as Eproms (erasable programmable read only memories) originating in Japan, is hereby accepted.

This acceptance shall take effect on the date of entry into force of Council Regulation (EEC) No 2860/93 (1).

Done at Brussels, 18 October 1993.

For the Commission
Leon BRITTAN
Vice-President

(1) See page 1 of this Official Journal.