COMMISSION DECISION

of 14 July 1995

suspending the definitive anti-dumping duty imposed on imports of certain types of electronic microcircuits known as EPROMs (erasable programmable read only memories) originating in Japan

(95/272/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 14 (4) thereof,

After consultation with the Advisory Committee,

Whereas :

(1) The Council, by Regulation (EEC) No 577/91 [2], as last amended by Regulation (EEC) No 2860/93 [3] imposed a definitive anti-dumping duty on imports into the Community of certain types of electronic microcircuits known as EPROMs (erasable programmable read only memories) originating in Japan, and falling under CN codes :

— 8542 11 33, 8542 11 34, 8542 11 35 or 8542 11 36 for finished UV erasable EPROMs,

— ex 8542 11 38 for finished Flash E²PROMs,

— ex 8542 11 76 for OTPs,

— ex 8542 11 01 for wafers for all types of EPROMs and

— ex 8542 11 05 for dice and chips for all types of EPROMs.

(2) The basic anti-dumping Regulation, i.e. Council Regulation (EC) No 3283/94 at Article 14 (4) provides for the suspension of anti-dumping measures imposed on the grounds that market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of such a suspension. Article 14 (4) further specifies that the anti-dumping measures concerned may be reinstated at any time if the reason for suspension is no longer applicable.

(3) As in the case of another type of electronic microcircuit, i.e. DRAMs [4], since the end of 1993 and the beginning of 1994, due to a strong and growing demand for EPROMs , in particular by telecommunication equipment manufacturers, prices of EPROMs, on a world-wide basis, have remained stable.

With respect to the Community market in particular, the Commission has been able to follow developments as almost all known Japanese EPROM producers supply the Commission on a regular basis with their detailed sales reports pursuant to undertakings which the Commission has accepted in the framework of the abovementioned anti-dumping proceeding [5]. An analysis of these reports has confirmed that the market behaviour of the exporters concerned is in line with the general evaluation of price developments made by market research companies, some of which monitor the semiconductor market particularly closely.

(4) With regard to the situation of the Community EPROM industry, the Commission has furthermore received information confirming that this industry has also benefited from the current market situation. Indeed, following the stabilization of the situation of the Community industry concurrently with the introduction of the above anti-dumping measures and following the substantial investments made for the production of the newest generations of EPROMs the Community industry's revenues stemming from an increase in EPROM sales volumes and in EPROM prices have had the effect that the Community industry is no longer suffering financial losses on current sales, but rather generating increased returns.

(5) The anti-dumping duty was imposed in order to underpin the undertakings and in order to ensure that imports of any EPROMs outside the scope of the undertakings would not be made at an injurious price level. The present market situation is one of strong demand, where market forces are sustaining a level of prices for EPROMs which is at or above the prices at which the above companies have undertaken to sell in the Community. It appears therefore that the absence of injurious dumping of EPROMs on the Community market at present is not dependent on the maintenance of the anti-dumping measures. Whilst the minimum prices applicable pursuant to the undertakings have been overtaken by market prices, the continued exis-

[1] OJ No L 349, 31. 12. 1994, p. 1.
[2] OJ No L 65, 12. 3. 1991, p. 1.
[3] OJ No L 262, 21. 10. 1993, p. 1.
[4] By Decision 95/197/EC, (OJ No L 126, 9. 6. 1995, p. 58) the anti-dumping duties imposed concerning DRAMs originating in Japan and Korea were suspended.

[5] By Decisions 91/131/EEC and 93/538/EEC (OJ No L 65, 12. 3. 1991, p. 42 and OJ No L 262, 21. 10. 1993, p. 64), the Commission accepted undertakings from certain Japanese EPROM-producers.

tence of the *ad valorem* anti-dumping duty constitutes an unnecessary barrier to entry to the Community market for EPROMs not covered by an undertaking.

(6) However, based on previous experience gained in the EPROM-market, it appears reasonable to conclude that this development in prices may well be temporary. Indeed, the EPROM-market is a cyclical market characterised by sharp up and downturns in prices. The likelihood that current market conditions are a temporary phenomenon leads to the conclusion that this situation should be dealt with by a temporary suspension of the anti-dumping duty.

(7) In conclusion, the Commission considers that all requirements to suspend the anti-dumping duty concerned pursuant to Article 14 (4) are met and that therefore this duty should be suspended for a period of nine months. This conclusion has been reached on the basis of:

— reliable sales information collected in the course of the anti-dumping proceeding concerned, reflecting market prices in the Community,

— the overall situation of the world EPROM market which, given the extensive market research data available, is inherently transparent, and

— experience of the cyclical nature of this industry.

(8) The Commission will continue to closely monitor the development of the EPROM market and the behaviour of individual market participants, in particular with respect to the newest generation of EPROMs. Should a situation arise in which a resumption of injury to the Community industry occurs, the Commission will reinstate the above anti-dumping measures without delay.

(9) To this end, the obligation to submit reports on sales and prices pursuant to the undertakings will enable the Commission to monitor the EPROM market. However, the Commission considers that, during the period of the suspension of the anti-dumping duty, the obligation to adhere to the minimum price provisions of these undertakings should be discontinued. The quarterly calculation and communication of such prices to these companies by the Commission will therefore be discontinued during this period.

(10) In accordance with the provisions of Article 14 (4) of the basic Regulation the Commission has informed the complainant of its intention to suspend the above anti-dumping measures and has provided it with an opportunity to comment. These comments have been taken into account reaching the present decision.

(11) The Advisory Committee was consulted on the suspension of the anti-dumping measures and raised no objections,

HAS DECIDED AS FOLLOWS:

Sole Article

The definitive anti-dumping duty imposed on imports of certain types of electronic microcircuits known as EPROMs (erasable programmable read only memories) originating in Japan by Council Regulation (EEC) No 577/91 is hereby suspended for a period of nine months.

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

Done at Brussels, 14 July 1995.

For the Commission

Leon BRITTAN

Vice-President