II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 April 1997

terminating the anti-dumping proceeding concerning imports of certain types of electronic microcircuits known as EPROMs (erasable programmable read only memories) originating in Japan and repealing the anti-dumping measures imposed on such imports

(97/251/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Articles 9, 11 (3), 11 (7) and 23 thereof,

Following consultations within the Advisory Committee as provided for by the said Regulation,

Whereas:

A. PROCEDURE

(1) In March 1991 and October 1993, the Commission accepted undertakings offered by eight exporters of EPROMs of Japanese origin [2]. A definitive anti-dumping duty was imposed by Council Regulation (EEC) No 577/91 [3].

(2) In June 1995, the Commission decided to suspend the anti-dumping measures for a period of nine months [4]. This decision was based on the findings that the market conditions had changed, due to a strong and growing demand for EPROMs, that market prices were stable at a relatively high level, and that the Community industry was no longer suffering from injury.

(3) In March 1996, the suspension was extended for a period of 12 months, until 15 April 1997, by a Council Regulation [5]. The Council determined that the extension was warranted because favourable market conditions had prevailed and would probably continue and that a recurrence of injury, as a result of such extension, was therefore unlikely.

(4) During the period of suspension, a notice of impending expiry of the anti-dumping measures imposed against imports of EPROMs of Japanese origin (hereinafter also called: 'the product concerned') [6], the Commission decided, in October 1995, and on its own initiative, to open an interim review, pursuant to Article 11 (3) of Council Regulation (EC) No 3283/94 [7], replaced by Council Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation').

(5) The grounds for the initiation of the interim review were:

[1] OJ No L 56, 6. 3. 1996, p. 1.
[2] OJ No L 65, 12. 3. 1991, p. 42, and OJ No L 262, 21. 10. 1993, p. 64.
[3] OJ No L 65, 12. 3. 1991, p. 1.
[4] OJ No L 165, 15. 7. 1995, p. 26.
[5] Council Regulation (EEC) No 664/96 (OJ No L 92, 13. 4. 1996, p. 1).
[6] OJ No C 239, 14. 9. 1995, p. 3.
[7] OJ No L 349, 31. 12. 1994, p. 1.

— an important new circumstance, namely the enlargement of the European Union, which had apparently led to a significant increase in the size of the Community EPROM market and had brought in several new substantial users of EPROMs,

— an apparent significant development in respect of technology and application of one product segment which justifies a review in order to clarify the product definition,

— the consideration that the interim review was appropriate to investigate the need for the continued imposition of the measures.

(6) Since the interim review was not concluded at the end of the period of application of the measures, the investigation, pursuant to Article 11 (7) of Regulation (EC) No 384/96, covered also the circumstances of an expiry review in accordance with Article 11 (2) of the Basic Regulation.

(7) The Commission officially advised the Community producers, the importers and the Japanese producers known to be concerned as well as the representatives of Japan of the opening of the investigation and gave the parties concerned the opportunity to make known their views in writing and to request a hearing.

The Commission sought and verified all information it deemed necessary for the purpose of the investigation and, for this purpose, visited the premises of SGS-Thomson Microelectronics Srl (complainant Community industry, see also recital 15 below).

(8) During the investigation period, the following companies exported the product concerned to the European Community and cooperated with the Commission in the review investigation:

— Advanced Micro Devices Inc.,

— Fujitsu Limited,

— Hitachi Ltd,

— Intel,

— Mitsubishi,

— Oki Electric Co. Ltd,

— Sanyo Electric Co. Ltd,

— Sharp Corporation,

— Texas Instruments,

— Toshiba Corporation.

One company, National Semiconductor Corporation which did not, in the investigation period, export EPROMs of Japanese origin to the Community, but intended to do so after that period, and which expressed its wish to offer an undertaking, cooperated in the investigation and replied to the Commission's questionnaire.

(9) The following unrelated importers, which are end-users of the product concerned, cooperated with the Commission in the present investigation:

— Telefonaktiebolaget LM Ericsson,

— Nokia Corporation.

(10) The investigation period applied in the present investigation was from 1 July 1994 to 30 June 1995. The trend analysis of factors relevant for the determination of injury was based on data collected for the period 1 January 1990 to the end of the investigation period.

(11) The investigation has exceeded the normal time period because of the complexity of the aspects regarding injury and the likelihood of recurrence of injury which was mainly owing to the large number and the degree of diversity of the different types within the product concerned.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(12) The products concerned by this investigation are EPROMs (erasable programmable read only memories), whether in processed wafer form or die form, and other product variations using EPROM technology, of all densities (including future densities), irrespective of access speed, configuration, frame or package. Flash EPROMs were also included in the investigation if they were based on an EPROM-like technology, typically (but not exclusively) on a one transitor cell technology, used in EPROM-like applications, and/or erasable only in blocks or sectors, thus distinguishing the Flash EPROM from other EPROMs which are byte-erasable.

(13) The product concerned was classified within the following 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 EPROMs,

— ex 8542 11 76 for OTPs,

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

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

(14) It was found that EPROMs produced in Japan, sold domestically and exported to the Community, and EPROMs produced by the Community industry and sold on the Community market are alike in their physical characteristics and use. They are therefore considered as a like product in accordance with Article 1 (4) of Council Regulation (EC) No 384/96.

C. DEFINITION OF THE COMMUNITY INDUSTRY

(15) The Community industry consists of SGS-Thomson Microelectronics Srl ('SGS-Thomson') which is a member of the European Electronic Component Manufacturers Association (EECA). The EECA was the complainant in the original investigation. SGS-Thomson is the only producer of EPROMs in the Community. The company submitted a response to the Commission's questionnaire within the deadline set by the Commission and cooperated in this investigation.

(16) Since SGS-Thomson is the only Community producer of EPROMs, it constitutes the entirety of Community production. The requirements of Article 4 (1) of Regulation (EC) No 384/96 are thus met.

D. INJURY

The situation of the Community industry

(17) *Value of sales*

The sales value of the Community industry, in the period 1990 to the investigation period, increased by more than 160 %.

(18) *Market share of the Community industry*

The investigation has shown that, while overall consumption in the Community of the product concerned increased by 104 % between 1990 and the investigation period, the market share of the Community industry on this market increased by 142 % in the same period.

(19) *Production capacity and capacity utilization*

The production capacity more than tripled between 1990 and the investigation period. Capacity utilization was constantly at the maximum level.

(20) *Stocks*

The value of stocks decreased by around 18 % between 1990 and the investigation period.

(21) *Employment*

Between 1990 and the investigation period, employment in the Community industry rose by 43 %.

(22) *Investment*

The amount of investment increased by 155 % between 1990 and the investigation period.

(23) *Profitability*

Whereas the Community industry incurred losses in the years 1990 to 1992, substantial profits were achieved in the years 1993, 1994 and in the investigation period. In the years 1993, 1994 and in the investigation period, the return on turnover reached a satisfactory level.

(24) *Conclusion on injury*

In the light of the abovementioned injury factors, it is considered that the Community industry did not suffer injury in the investigation period, since it produced at full capacity, sales value was at its maximum level, compared to production capacity, stocks were kept at the minimum level, employment had risen substantially, and profitability was high.

E. LIKELIHOOD OF RECURRENCE OF INJURY

Factors concerning the likelihood of recurrence of injury

(25) *Characteristics of the EPROM market*

The EPROM market in the past has been fast growing, but volatile, as established in the original investigation. However, this volatility was less pronounced than for other types of integrated circuits, for example DRAMs, because the use of EPROM is spread more widely over different applications and user industries.

(26) *Market demand trends*

The market demand had been increasing substantially and continually in the period from 1990 to the investigation period. On the basis of the information obtained during the investigation, it can be concluded that substantial growth rates may be expected for the time after the investigation period. These findings are confirmed by a market forecast made by a market analyst which predicts a growth of market consumption of almost 90 % between 1995 and 1999. Other market forecasts from other market research institutes are even more optimistic.

(27) *Market supply trends*

It was found in the investigation period that EPROM manufacturers worldwide had, in particular in 1995, in view of the high growth in demand for Flash EPROMs, begun to extend their production capacities for Flash. Further investment decisions for additional production capacities have been announced for the time thereafter. According to publicly available data, around 40 % of these capacities have been or will be established in Japan. These capacities would increase substantially the overall world production capacity for Flash between 1995 and 1999. Compared to Flash, no substantial increase in production capacities for EPROMs proper has been announced.

(28) *Factors concerning the likelihood of recurrence of injury*

The investigation showed that, at the end of the investigation period, the Community market for EPROMs was still stable, the situation of under-supply had continued and prices were still high. There were no substantiated indications that a change in market circumstances, which could have led to a recurrence of injury to the Community industry, was likely. Moreover, in an assessment concerning the likelihood of recurrence of injury, which was mainly based on the cost and sales data obtained from the Japanese producers in their periodical undertaking reports, it was found that, in mid 1996, i.e. one year after the investigation period of the review, the Community market for EPROMs had remained stable. Although the additional production capacities which had come on-stream had improved market supply, in particular for Flash, there were again no substantiated indications that these increased production capacities, in particular those built up by the Japanese manufacturers, would, in the imminent future, create a situation of over-supply on the Community market which could lead to a recurrence of injury to the Community industry. These findings were confirmed by the data available from market research institutes.

(29) *Conclusions concerning the likelihood of recurrence of injury*

In the light of the foregoing, it is considered that the recurrence of injury, should the measures expire, is unlikely and that the measures are therefore no longer necessary.

F. DUMPING/LIKELIHOOD OF RECURRENCE OF DUMPING

(30) In view of the findings made in respect of injury, the investigation into dumping was not further pursued. Indeed, any dumping which might have been determined would not have caused injury and would therefore not be relevant for the purpose of this investigation. The same applies for the determination of the likelihood of recurrence of dumping.

G. COMMENTS OF THE COMMUNITY INDUSTRY ON THE COMMISSION'S FINDINGS

(31) The aforementioned findings and considerations were disclosed to the Community industry.

(32) The Community industry claimed in its comments that the Commission had not taken into account the market development for EPROMs, in particular for the market segment of Flash EPROMs, since October 1996, which would show a steady decline of sales prices for these product types. Furthermore, the company pointed to a publication in October 1996 by market analysts which predicted, for an undefined point in time in the future, an over-supply of Flash EPROMs and a price-crash comparable to that seen for DRAMs, based on a background of increased production capacities and further projects of substantial capacity extension.

(33) Although the above information would indicate a certain weakening of one market segment for the product concerned, the information submitted is not considered to justify a reversal of the positive trend as determined, based on the findings for the investigation period. Indeed, the data cited by the Community industry on the price development since October 1996 does not constitute a substantiated indication that this would lead to the recurrence of dumping and injury.

(34) The Commission therefore considers that the considerations set out in recitals 23 and 28 concerning injury in the investigation period and the likelihood of recurrence of injury remain valid.

H. CONCLUSIONS

(35) Given the above findings, it is considered that the anti-dumping proceeding concerning imports into the Community of EPROMs originating in Japan should be terminated and that the anti-dumping measures in force should be allowed to lapse.

(36) The Commission informed the interested parties other than the Community industry of its intention to terminate this proceeding and to allow the anti-dumping measures in force to lapse.

(37) The Member States were consulted. No Member State raised objections to the Commission's intended course of action.

I. ENTRY INTO FORCE OF THIS DECISION

(38) The Commission considers that this Decision should enter into force on 16 April 1997, since the suspension of the anti-dumping duty expires on this day,

HAS DECIDED AS FOLLOWS:

Article 1

The anti-dumping proceeding concerning imports of EPROMs falling within 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 EPROMs,

— 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

and originating in Japan is terminated and the anti-dumping measures imposed by Regulation (EEC) No 577/91 on such imports will therefore lapse.

Article 2

This Decision shall enter into force on 16 April 1997.

Done at Brussels, 14 April 1997.

For the Commission

Leon BRITTAN

Vice-President