COMMISSION DECISION

of 22 April 1988

concerning applications for refund of anti-dumping duties collected on certain imports of certain ball bearings originating in Singapore (NMB (Deutschland) GmbH)

(Only the German text is authentic)

(88/328/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], as amended by Regulation (EEC) No 1761/87 [2], and in particular Article 16 thereof,

Whereas :

A. Procedure

(1) On 19 July 1984, by Council Regulation (EEC) No 2089/84 [3], a definitive anti-dumping duty of 33,89 % was imposed on imports of certain ball bearings manufactured and exported by the Minebea group of companies and originating in Singapore.

(2) In 1985 and 1986 NMB (Deutschland) GmbH, Neu Isenburg, a wholly owned subsidiary of the Japanese mother company of the Minebea group, applied, on a regular basis, for the refund of anti-dumping duties amounting in total to DM ... [4] paid on imports of the ball bearings during the two years in question. This amount represents part of the anti-dumping duties paid ; a refund of the remainder was not requested.

(3) Following submissions by the applicant, additional information on certain costs, prices, commercial conditions and commercial activities of the Minebea group outside Singapore was requested by the Commission on the basis of the Commission notice concerning the reimbursement of anti-dumping duties [5] (hereinafter referred to as Notice). The applicant complied with all requests for additional information to the satisfaction of the Commission. Subsequently, the applicant was informed of the preliminary results of this examination and given an opportunity to comment on it. It did so, and the comments were taken into consideration prior to this Decision.

(4) The Commission informed the Member States and gave its opinion on the matter. No Member State disagreed with this opinion.

B. Argument of the applicant

(5) The applicant has based its claims on the allegation that, for certain sales in the Community, export prices were such that either dumping did not exist or that dumping existed at a level lower than the level of the definitive duty of 33,89 %.

C. Admissibility

(6) The applications are admissible since they were introduced in conformity with the relevant provisions of the Community's anti-dumping legislation, in particular that concerning time limits.

D. Merits of the claim

(7) The applications are founded in part ; for the rest they are unfounded. According to Article 16 (1) of Regulation (EEC) No 2176/84, anti-dumping duties paid by an importer shall be reimbursed if the importer shows that the duty collected exceeds the actual dumping margin, consideration being given to any application of weighted averages. Pursuant to Article 16 (1) and Part II of the Notice the applicant proved that the duty collected exceeded the actual dumping margin to varying degrees depending on the shipment and the bearing type partly as a result of normal value having decreased. To this extent the applications were founded and the applicant agrees with the Commission's calculation. The amount to be refunded is DM ....

(8) The applicant requests, however, the refund of an additional amount. For the determination of this additional amount, the applicant agrees with the Commission that, when calculating the dumping margin for the purpose of establishing whether it was exceeded by the level of duty or not, the export prices have to be constructed in accordance with Article 2 (8) (b) of Regulation (EEC) No 2176/84.

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[1] OJ No L 201, 30. 7. 1984, p. 1.
[2] OJ No L 167, 26. 6. 1987, p. 9.
[3] OJ No L 193, 21. 7. 1984, p. 1.
[4] In the published version of the Decision, some figures have been omitted pursuant to the provisions of Article 8 of Regulation (EEC) No 2176/84 concerning non-disclosure of business secrets.
[5] OJ No C 266, 22. 10. 1986, p. 2.

Article 2 (8) (b) provides that an export price is constructed on the basis of the price at which the imported product is first resold to an independent buyer and that allowance shall be made for all costs incurred by the related importer between importation and resale, including customs duties, any anti-dumping duties and other taxes, and for a reasonable profit margin.

The applicant maintains, however, that in constructing the export price, the anti-dumping duty should not be deducted; this would then result in a lower dumping margin for the refund calculation and consequently in a higher amount to be refunded.

The applicant justifies its request by claiming that, as a result of the Commission's position, imports by independent importers are treated differently from imports by related importers.

The Commission has evaluated this argument; it does not find it acceptable.

It is of the opinion that the wording of Article 2 (8) (b) is clear: all duties, including anti-dumping duties have to be deducted from the resale price. The Commission would, therefore, by granting the applicant's request, infringe the express requirement of Article 2 (8) (b) and of Part II 2 (b) and (c) of the Notice. Regulation (EEC) No 2176/84 establishes different rules for the determination of the export price in different situations depending on whether the importer is related to the exporter or not. This cannot be considered discriminatory.

The second essential argument by the applicant, who sold on a duty-paid basis, is that a simple increase of its resale price in the Community by an amount equivalent to the amount of the duty, would not allow it to qualify for a refund. The Commission stresses that, had the applicant sold on a duty unpaid basis, a single increase would have been sufficient to allow it to qualify for a refund.

Even where, as in the applicant's situation, the imported product was resold in the Community on a duty-paid basis, only one increase of the resale price by an amount equivalent to the amount of the duty is necessary, provided that the Commission is satisfied that in the particular circumstances of the case under consideration this increase in the price paid by the independent buyer eliminates or reduces the dumping margin and does not represent merely the anti-dumping duty which the importer could pass back to its customer if it obtained a refund. This could be the case, for example, if either the costs incurred between importation and resale by NMB or Minebea's normal value had been reduced since the original investigation period. In addition, other changes in circumstances could require the application of different adjustment or calculation methods which could lead to the same result, i.e. the elimination or reduction of the dumping margin by a single price increase. In the present case there is no evidence that these conditions are met.

For these reasons the applicant's request for the refund of an additional amount has to be rejected,

HAS ADOPTED THIS DECISION:

Article 1

The refund applications submitted by NMB (Deutschland) GmbH, Neu Isenburg, for the years 1985 and 1986 are granted for DM ... and rejected for the remainder.

Article 2

The amount set out in Article 1 shall be refunded by the authorities of the Federal Republic of Germany.

Article 3

This Decision is addressed to the Federal Republic of Germany and NMB (Deutschland) GmbH, Neu Isenburg, Federal Republic of Germany.

Done at Brussels, 22 April 1988.

For the Commission

Willy DE CLERCQ

Member of the Commission