COMMISSION DECISION

of 21 March 1989

concerning applications for refund of anti-dumping duties collected on certain imports of hydraulic excavators originating in Japan (Oswald de Bruycker NV)

(Only the Dutch and French texts are authentic)

(89/258/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 16 thereof,

Whereas:

A. PROCEDURE

(1) Council Regulation (EEC) No 1877/85 [2] imposed a definitive anti-dumping duty on imports of certain hydraulic excavators exceeding six tonnes but not exceeding 35 tonnes originating in Japan. The rate of duty applied to Kobelco-Kobesteel Ltd (hereinafter referred to as Kobelco) was 31,9 %.

(2) Between November 1985 and July 1987 Oswald de Bruycker NV, Ostend, an independent importer, made five applications for the refund of definitive anti-dumping duties paid on the importation of 10 hydraulic excavators manufactured and exported by Kobelco. The total amount requested was Bfrs . . . [3]. The applications were sent to the Belgian customs authorities and forwarded to the Commission. For each application, the applicant was asked to provide the information needed to calculate the normal value of the products for the six months preceding each importation, as laid down in point I.B (a) of the Commission notice concerning the reimbursement of anti-dumping duties [4].

(3) The Commission asked the applicant for additional information, which was supplied within the time limit set. The Commission also visited Kobelco's premises in Japan to check the information on normal value which Kobelco had sent to the Commission at the request of the applicant.

(4) The applicant was informed of the preliminary results of this examination and given an opportunity to comment.

(5) The Commission informed the Member States and gave its opinion on the matter. No Member State raised any objection.

B. ARGUMENT OF THE APPLICANT

(6) Essentially, the applicant argued that the export price paid was significantly higher than the normal value.

C. ADMISSIBILITY

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

D. MERITS OF THE CLAIM

(8) The applications are founded in part. Pursuant to Article 16 (1) of Council Regulation (EEC) No 2176/84 [5] (and under Regulation (EEC) No 2423/88) an importer who has paid anti-dumping duties and who applies for reimbursement must show that the duty collected exceeds the dumping margin calculated over the relevant reference period for the imports for which the duty was collected. Calculation of the actual dumping margin must normally be based on the same method as that applied during the original investigation, in particular with regard to any application of weighted averages [6].

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[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 176. 6. 7. 1985, p. 1.
[3] In accordance with Article 8 of Regulation (EEC) No 2423/88, which deals with the non-disclosure of business secrets, certain figures have been omitted from the published version of this Decision.
[4] OJ No C 266, 22. 10. 1986, p. 2.
[5] OJ No L 201, 30. 7. 1984, p. 1.
[6] Point II.2 (b) of the Commission notice concerning the reimbursement of anti-dumping duties.

(9) In this case an average dumping margin applied without distinction to all the models released for free circulation in the Community during a single reference period was established by comparing the normal value of each model on a monthly weighted average basis with the export price of the same model during the corresponding month on a transaction-by-transaction basis (1).

The Commission considered that the information supplied by the applicant regarding export prices and by the exporter regarding the normal value of the different models was sufficient to calculate correctly the average actual dumping margin. A dumping margin was thus calculated for each reference period corresponding to an application, whereby the average normal value of each model was compared on a transaction-by-transaction basis with the export price for each of Kobelco's consignments released for free circulation in the Community during the reference period in question.

It was found that in all the reference periods except the first the initial dumping margin had been gradually reduced or eliminated, resulting in an average actual dumping margin below the amount of duty collected. This development was due essentially to a rise in export prices, which was not sufficient, however, to eliminate the dumping entirely in every case.

E. AMOUNT TO BE REIMBURSED

(10) A total of Bfrs . . . is reimbursable to Oswald de Bruycker NV, representing the difference between the amount of duty collected and the actual dumping margin,

HAS ADOPTED THIS DECISION:

Article 1

The refund applications submitted by Oswald de Bruycker NV are hereby granted for Bfrs . . . and rejected for the remainder.

Article 2

The amount set out in Article 1 shall be refunded by the Belgian authorities.

Article 3

This Decision is addressed to the Kingdom of Belgium and Oswald de Bruycker NV, Archimedesstraat 53, B-8400 Ostend.

Done at Brussels, 21 March 1989.

For the Commission
Frans ANDRIESSEN
Vice-President

(1) Regulation (EEC) No 1877/85, point 9.