COMMISSION DECISION

of 21 March 1989

concerning applications for refund of anti-dumping duties collected on certain imports of hydraulic excavators originating in Japan (Tridiam Ltd)

(Only the English text is authentic)

(89/261/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 Mitsubishi Heavy Industries was 21,6 %.

(2) Between November 1985 and September 1986 Tridiam Ltd, Woking, Surrey, the sole importer into the Community of the machines produced by Mitsubishi, made three successive applications for the refund of anti-dumping duties paid on the importation of hydraulic excavators between October 1985 and September 1986. The total amount requested was £ . . . [3], representing the total anti-dumping duty paid.

The applications were submitted in the form and within the time limit prescribed under the anti-dumping rules.

(3) Tridiam subsequently claimed that it had submitted another application, which did not, however, appear in the Commission's files. Not until 10 June 1987 did the Commission receive a copy of the final application, for £ . . ., corresponding to anti-dumping duties paid on machines imported in April 1986. Attached was a copy of a letter from the applicant's representative, which showed that the fourth application had not been sent to the relevant national authorities within three months from the day on which the definitive anti-dumping duties had been determined.

(4) Having informed Tridiam of the guidelines contained in the Commission notice concerning the reimbursement of anti-dumping duties [4], the Commission asked the applicant, pursuant to point I.7 of the notice, for additional information on the normal value during the six-month periods preceding the imports in question and on the application of certain adjustments. The applicant supplied the information available to it within the agreed time limit.

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

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

B. ARGUMENT OF THE APPLICANT

(7) Essentially, the applicant argued that the 12 excavators imported between November 1985 and September 1986 were not imported at prices constituting dumping.

C. ADMISSIBILITY

(8) The first three 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.

The fourth application concerned anti-dumping duties determined in April 1986. Pursuant to Article

[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.

16 (2) of Council Regulation (EEC) No 2176/84 [1] it should have been submitted to the relevant United Kingdom authorities within three months of the date on which the duties were determined, i.e. by July 1986 at the latest. The Commission did not receive a copy until June 1987, and the applicant conceded that it had not been sent to the Department of Trade and Industry within the given time limit. It therefore follows that, since the conditions relating to form and time limit laid down by Regulation (EEC) No 2176/84 were not met, Tridiam's fourth application must be declared inadmissible.

D. MERITS OF THE CLAIM

(9) The first two admissible applications are well founded. They are backed up by the information supplied by the applicant regarding the dumping margin for the relevant reference period. The investigation showed that export prices rose by comparison with the initial investigation period and that the dumping margin was thus eliminated.

(10) The third application concerned duties paid for the importation of four excavators. The Commission considered that the information supplied by the applicant regarding the normal value and the export price during the relevant reference period was sufficient for it to calculate correctly the average actual dumping margin, using the same method applied during the first investigation.

Accordingly, it was found that the third application is founded in part, since although there continued to be a dumping margin of 5,86 % for the reference period in question, it was less than the duties collected. This is explained principally by a rise in export prices.

E. AMOUNT TO BE REIMBURSED

(11) The amount claimed in the second application has had to be reduced. An adjustment had to be made owing to physical differences between the imported model and the standard model defined in the initial proceeding. The first two applications are therefore founded for a total of £ . . .

(12) A partial reimbursement of £ . . . can be accorded for the third application, bringing the total amount reimbursable to Tridiam Ltd to £ . . .,

HAS ADOPTED THIS DECISION:

Article 1

The application for the refund of anti-dumping duties submitted by Tridiam Ltd, Woking, Surrey, in June 1987 for an amount totalling £ . . . is hereby declared inadmissible.

Article 2

The other applications for the refund of anti-dumping duties submitted by Tridiam Ltd, Woking, Surrey, are granted for £ . . . and rejected for the remainder.

Article 3

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

Article 4

This Decision is addressed to the United Kingdom and Tridiam Ltd, West End, Woking, Surrey, United Kingdom.

Done at Brussels, 21 March 1989.

For the Commission
Frans ANDRIESSEN
Vice-President

(1) OJ No L 201, 30. 7. 1984, p. 1.