COMMISSION DECISION

of 21 March 1989

concerning applications for refund of anti-dumping duties collected on certain imports of hydraulic excavators originating in Japan (Hitachi Construction Machinery (Europe) BV)

(Only the Dutch text is authentic)

(89/262/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 Hitachi Construction Machinery Co. Ltd, Tokyo, was 12,4%.

(2) Between October 1985 and September 1987 Hitachi Construction Machinery (Europe) BV (hereinafter referred to as 'HCME'), Oosterhout, made nine applications, following the normal procedure, for the refund of definitive anti-dumping duties paid on the importation between March 1985 and September 1987 of hydraulic excavators produced by Hitachi Construction Machinery Co. Ltd, Tokyo. The total amount requested was Fl . . . [3], representing part of the Fl . . . paid altogether in anti-dumping duties on the imports.

(3) The applications were treated as recurring applications within the meaning of point I.B.4 (a) of the Commission notice concerning the reimbursement of anti-dumping duties (hereinafter referred to as the 'Commission notice') [4]. They were therefore grouped by six-month periods for the presentation of the required information and the assessment of the actual dumping margin.

(4) The Commission asked the applicant for further details on certain calculations and for additional information on trends in certain costs, the comparability of certain new models with those covered by the original investigation, and certain reductions or sales facilities granted to the applicant's customers.

(5) The applicant complied with the Commission's request only in respect of the applications for reimbursement relating to the period from March 1985 to March 1986 inclusive, i.e. the first two reference periods, and stated that it was withdrawing the subsequent applications and would not therefore be completing the case histories.

(6) The Commission visited the premises of HCME to carry out a check on export prices. Similarly, information regarding the normal value and freight costs was checked on the premises of Hitachi Construction Machinery Co. Ltd in Japan and with C. Itoh, the exporting company.

(7) Following these checks, which led to a number of corrections being made to the data originally supplied, the applicant produced new calculations, reducing the amount originally requested for the period from March 1985 to March 1986 from Fl . . . to Fl . . . However, it pointed out that, during the on-the-spot checks on normal value, Hitachi Construction Machinery Co. Ltd had discovered that data relating to the first reference period had mistakenly been used again in calculating the normal value for the second period. This had resulted in a higher normal value. The applicant argued that this error at its own cost was clearly involuntary since it resulted in a wider dumping margin, and that its applications should therefore be considered justified for a larger amount.

(8) The Commission found that the calculations presented by the applicant for the comparisons between normal value and export price were in line with the method used during the original

[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.

investigation. However, they were incomplete in that they gave an actual dumping margin based solely on the applicant's imports into the Netherlands. As in the initial proceeding, an average actual dumping margin was calculated which included all exports to the Community of excavators produced by Hitachi Construction Machinery Co. Ltd during the relevant periods and for which information had also been supplied. This gave an average actual dumping margin different from that calculated with reference only to the applicant's own imports, as other dumping margins were established for imports into other Member States during the same period.

(9) The applicant was informed of the preliminary results of this examination and given an opportunity to comment. Account has been taken of its comments in this Decision.

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

B. ARGUMENT OF THE APPLICANT

(11) The applicant maintained that the information it supplied showed that, during the period from March 1985 to March 1986, the amount of definitive duties it paid was higher than the actual dumping margin, owing to a drop in normal values resulting from a rationalization of production costs and a rise in export prices. It also argued that the reimbursable amounts should be those resulting from the Commission's checks on the data submitted at the beginning of the procedure, account being taken of the resulting corrections and the application of the method used during the original investigation.

C. ADMISSIBILITY

(12) 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

(13) The applications, as they stood corrected at the end of the procedure, appear to be well founded. Pursuant to Article 16 (1) of Council Regulation (EEC) No 2176/84 [1] (and under Regulation (EEC) No 2423/88) anti-dumping duties which have already been paid may be refunded when the importer who has paid the duties can show that the duty collected exceeds the actual dumping margin. On the basis of the information supplied by the applicant and, as far as possible, applying the method used during the first investigation, the dumping margin which existed at the time the goods in question were imported had therefore to be calculated over a representative period, account being taken of the application of weighted averages, and then compared with the duties paid on the basis of a 12,4 % anti-dumping duty.

In the original investigation the dumping margin was determined for each model by comparing a monthly average normal value with export prices during the relevant month on a transaction-by-transaction basis. An average dumping margin was then calculated for all the models. No new finding suggested that the method first used to determine the actual dumping margin should be abandoned.

In accordance with Article 16 (1) of Regulation (EEC) No 2176/84 and the second part of the Commission notice, and submitting the data according to the same principles established in the original investigation, the applicant showed that the duties collected in the two reference periods exceeded the actual dumping margin by varying degrees according to the model being imported. A check showed this to be the result of some reduction in normal value compared with an upward trend in export prices during the relevant period. This led to an average actual dumping margin lower than that determined in the initial investigation (4,8 % during the first reference period, 0,8 % during the second), which justifies a partial reimbursement of the anti-dumping duties paid.

E. AMOUNT TO BE REIMBURSED

(14) The Commission considered that account could be taken of the corrections requested by the applicant, as this involved not new data but merely the correction of the data submitted during the time allowed and which it had already been claimed showed a change in relation to the period of the initial investigation.

In accordance with point II.2 (d) of the Commission notice, a total of Fl . . . is reimbursable, established as the difference between the amount of duty collected and the average actual dumping margin. This represents the whole amount requested, as reassessed following checks,

[1] OJ No L 201, 30. 7. 1984, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The refund applications submitted by Hitachi Construction Machinery (Europe) BV, Oosterhout, for the period from March 1985 to March 1986 are hereby granted for Fl . . .

Article 2

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

Article 3

This Decision is addressed to the Kingdom of the Netherlands and Hitachi Construction Machinery (Europe) BV, Oosterhout, Netherlands.

Done at Brussels, 21 March 1989.

For the Commission
Frans ANDRIESSEN
Vice-President