COMMISSION DECISION

of 6 August 1990

concerning applications for refund of anti-dumping duties collected on the import of vinyl acetate monomer originating in the United States of America (Quantum Chemical Corporation)

(90/461/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) By Regulation (EEC) No 2357/87 (2), the Council amended Regulation (EEC) No 1282/81 imposing a definitive anti-dumping duty on imports of vinyl acetate monomer originating in the United States of America (3). Anti-dumping duty of 5,9% was applied to the American company US Industrial Chemicals Co., later to become Quantum Chemical Corporation, to which the 5,9% duty was declared to be applicable by Council Regulation (EEC) No 2166/89 (4).

(2) Since May 1988 US Industrial Chemicals Europe BV, a European subsidiary of Quantum Chemical Corporation, based in Bavel, the Netherlands, which changed its business name to Quantum Chemical Europe BV at the beginning of 1989, has been submitting periodic applications for refund of anti-dumping duties paid on imports of vinyl acetate monomer produced and exported by Quantum Chemical Corporation.

The Commission, with the agreement of the applicant, decided to treat the applications as recurring applications within the meaning of point 1.4 of the Commission notice concerning the reimbursement of anti-dumping duties (hereinafter referred to as 'the notice') (5). Accordingly, the applicant has submitted successive applications, within the three-month time limit set out under Article 16 (2) of Regulation (EEC) No 2423/88. The information required to assess the merits of the applications has been provided at six-monthly intervals.

(3) In November 1988 the Commission received a request lodged by Quantum Chemical Corporation, a US producer/exporter, for a review of the anti-dumping measures applicable to imports of vinyl acetate monomer originating in the United States of America. On 25 April 1989 the Commission opened the review proceeding covering the period October 1988 to March 1989 inclusive (6). In accordance with point 1.5 of the notice, it was decided that the proceeding regarding the application for reimbursement would be suspended until termination of the review. However, the applicant continued to submit periodic applications. Council Regulation (EEC) No 490/90 repealed Regulation (EEC) No 2357/87 and terminated the anti-dumping proceeding concerning imports of vinyl acetate monomer originating in the United States (7). Thus, since 2 March 1990, anti-dumping duty can no longer be imposed on imports of vinyl acetate monomer.

(4) So as not to delay the decision on refunds, it was decided to process immediately the applications concerning imports made up to March 1989. These applications were examined during the review and are covered by this Decision. Recurring applications submitted after this date, or which might still be submitted, covering periods up to 1 March 1990 — when the duty ceased to be applicable — will be covered by a further Decision.

(5) The total amount of refunds requested was Fl (. . .) and £ (. . .) (8), which represent all the duty paid during the reference period in question.

(6) The applicant was informed of the results of this examination and had the opportunity to submit its comments.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 213, 4. 8. 1987, p. 32.
(3) OJ No L 129, 15. 5. 1981, p. 1.
(4) OJ No L 208, 20. 7. 1989, p. 2.
(5) OJ No C 266, 22. 10. 1986, p. 2.
(6) OJ No C 105, 25. 4. 1989, p. 3.
(7) OJ No L 53, 1. 3. 1990, p. 1.
(8) 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.

(7) Pursuant to Article 16 (2) of Regulation (EEC) No 2423/88, the Commission informed the Member States and gave its opinion on the admissibility and the merits of the applications. No Member State raised any objection.

B. ARGUMENT OF THE APPLICANT

(8) The applicant argued, as it had done to support the review application, that the imports in question were not dumped.

C. ADMISSIBILITY

(9) The applicant submitted its first request for refund on 31 May 1988 in respect of duties determined between December 1987 and mid-April 1988. Pursuant to Article 16 of Regulation (EEC) No 2423/88, applications for refund of anti-dumping duties are admissible if they are submitted within three months of the date on which the anti-dumping duties were duly determined. The first application submitted by Quantum Chemical Europe is, therefore, admissible only in part, namely in respect of duties determined since 1 March 1988. Thus the refunds requested should be reduced by Fl (. . .) and £ (. . .), corresponding to the duties determined before that date.

The remaining recurring applications are admissible in that they were lodged 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

(10) All the applications examined, covering the period March 1988 to March 1989, are well founded. Indeed, the applicant, in accordance with the provisions of Article 16 of Regulation (EEC) No 2423/88, supplied evidence that the actual dumping margin had been eliminated by the time the imports in question were made. The Commission was able to verify all the information supplied. It was decided to calculate the dumping margin using the method that had been used during the first investigation. Given that the applicant is a subsidiary of the exporter, the provisions of point 11.2 (c) of the notice were applied, namely all costs incurred between importation and resale, including the anti-dumping duties paid, were deducted from the resale price to the first independent buyers. It was found that the dumping margin was nil. This development was due to substantial modifications in export prices resulting from significant changes in market conditions worldwide for the product imported.

Accordingly, the applications for refund of anti-dumping duties submitted by Quantum Chemical Europe BV for vinyl acetate monomer imported between March 1988 and March 1989 inclusive and considered admissible should be granted.

E. AMOUNTS TO BE REIMBURSED

(11) A total of Fl (. . .) and £ (. . .) is therefore to be reimbursed to Quantum Chemical Europe BV,

HAS ADOPTED THIS DECISION:

Article 1

The application for refund of anti-dumping duties submitted by Quantum Chemical Europe BV, Bavel, Netherlands, on 31 May 1988 is inadmissible in part and is hereby rejected in respect of an amount totalling Fl (. . .) and £ (. . .).

Article 2

The applications for refund of anti-dumping duties submitted by Quantum Chemical Europe BV, Bavel, covering the period March 1988 to March 1989 inclusive are hereby granted for Fl (. . .) and £ (. . .).

Article 3

The amount in Dutch guilders set out in Article 2 shall be refunded by the Netherlands authorities; the amount in pounds sterling set out in the same Article shall be refunded by the United Kingdom authorities.

Article 4

This Decision is addressed to the Kingdom of the Netherlands, the United Kingdom and Quantum Chemical Europe BV, Bavel, Netherlands.

Done at Brussels, 6 August 1990.

For the Commission
Frans ANDRIESSEN
Vice-President