II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 February 1990

concerning applications for refund of anti-dumping duties collected on certain imports of light sodium carbonate originating in Bulgaria (Industrial Resinera Valcan, SA)

(Only the Spanish text is authentic)

(90/86/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) On 1 February 1963 the Council adopted Regulation (EEC) No 273/83 [2] imposing a definitive anti-dumping duty on imports of light sodium carbonate originating in Bulgaria and other non-member countries. The rate of duty applied to imports of light sodium carbonate in bulk or bagged originating in Bulgaria was fixed as follows :

— 14,09 % of the price per tonne net, free at Community frontier, before duty,

or

— the difference between the price per tonne net, free at Community frontier, before duty, and the sum of ECU 113,85,

whichever amount is the higher.

This duty was increased by ECU 9,50 per tonne net for imports in bags of a weight of less than 500 kg each.

(2) On 25 August 1987 industrial Resinera Valcan, SA, of Cuenca (Spain) submitted an application of a refund of anti-dumping duties paid on the import, in May 1987, of 1 000 tonnes of light sodium carbonate in bags of less than 500 kg originating in Bulgaria. The duties amounted to a total of Ptas. . . [3].

(3) It is clear from the original procedure that prices on the Austrian market had been used as the reference prices for determining the normal value [4]. The applicant was not able to obtain the necessary information in that regard since it did not know the identity of the Austrian producer, which was not named in Regulation No 273/83. On being contacted by the Commission, the producer sent to the Commission information concerning prices on the Austrian market for the references period of six months preceding the import in question [5].

(4) In accordance with the Notice, the applicant asked the Bulgarian exporter for information relating to export prices for the other consignments made by the Bulgarian exporter to the Community during

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 32, 3. 2. 1983, p. 1.

[3] In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.
[4] See Regulation (EEC) No 2667/82 (provisional duty), OJ No L 283, 6. 10. 1982, p. 9, and Regulation No 273/83, quoted above, end of sixth recital.
[5] See Commission notice concerning the reimbursement of anti-dumping duties, point I (3) (B) (a), OJ No C 266, 22. 10. 1986, p. 2, hereinafter referrd to as 'the Notice'.

the reference period. The applicant received no reply, so the Commission itself approached the exporter, also without success. All that is known is the export period paid by the applicant.

(5) On 21 June 1988, in the course of examining the refund application, the Commission published a notice of initiation of a review of the anti-dumping measures imposed by Regulation (EEC) No 273/83 [1]. Referring to point I (5) of the Notice, the Commission, with the agreement of the applicant, decided to suspend the refund procedure until publication of the results of the review [2].

It was established that for the period from 1 January 1987 to 31 May 1988 the dumping margin for imports originating in Bulgaria was 67 % and upwards [3]. This margin was calculated on the basis of a normal value established by reference to prices on the Mexican market.

(6) The Commission informed the applicant that its application did not appear to be justified and that it intended to reject it.

(7) The applicant had the opportunity to submit its comments.

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

B. Argument of the applicant

(9) The applicant argued in essence that the imports could not have been dumped because the price it paid was greater than a price invoiced in April 1986 by a Spanish producer for the same product. The Commission argued that the absence of information from the exporter concerning the prices of other consignments put into free circulation in the Community during the reference period prevented calculation at the Community level of the effective dumping margin, bearing in mind the application of weighted average. In reply, the applicant requested a specific review of its case, claiming that there may be exceptional cases justifying a departure from the general guidelines on refunds.

C. Admissibility

(10) The application is admissible in that it was 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

(11) The application must be rejected. Article 16 (1) of Regulation (EEC) No 2423/88 stipulates that the importer requesting the refund must show that the anti-dumping duty paid exceeds the effective dumping margin, bearing in mind the application of weighted averages. This has not been done, for the exporter has not provided information permitting a determination of all the export prices which could serve as a basis for calculating the effective dumping margin. Although the review procedure compensated for the absence of adequate evidence it should be stressed that it is independent of the refund procedure and that, in its absence, the refund application would have had to be rejected. Lastly, it should be noted that a refund can only be granted on the basis of a comparison of the anti-dumping duty paid for one or more imports and the dumping margin found for the representative period for the import(s) (the 'effective dumping margin'). This margin is calculated on the basis of the producer-exporter's normal value and the prices paid for all consignments from that source put into free circulation in the Community. As a result, the applicant's reference to the prices charged on the Spanish market by a European producer, which were, moreover, for a period which was not representative for the import in question, is immaterial.

(12) The review procedure also specifically established that the effective dumping margin amounted to 67 % for the reference period in question. The review file showed that the margin was precisely that applicable to the six months preceding the import in question. The margin subsequently became even greater when other imports of products from the Bulgarian exporter put into free circulation in the Community were taken into account in relation to the total investigation period of 17 months used for the review. The effective dumping margin was therefore greater than the dumping margin originally found, which varied between 54 % and 63,5 % for Bulgaria [4].

For a refund to be granted it would have been necessary for the effective dumping margin to fall below 14,09 %, the rate of duty applied to the import in question. That is manifestly not the case.

(13) The investigation also covered the question of whether the result would have been different if the reference used to establish the normal value had not been the Mexican market prices used in the

[1] OJ No C 162, 21. 6. 1988, p. 9.
[2] Council Regulation (EEC) No 1306/89, OJ No L 131, 13. 5. 1989, p. 4.
[3] Regulation No (EEC) 1306/89, point 19.
[4] Regulation (EEC) No 2667/82, cited above.

review but the Austrian market prices used in the original inquiry. It was found that in such a case the effective dumping margin would have been even greater than that mentioned above because the normal value would have been higher. The application for refund must therefore be rejected,

HAS ADOPTED THIS DECISION :

Article 1

The application for the refund of anti-dumping duties submitted by industrial Resinera Valcan, SA is hereby rejected.

Article 2

This Decision is addressed to the Kingdom of Spain and Industrial Resinera Valcan, SA, Carretera de Alcázar, Cuenca, Spain.

Done at Brussels, 22 February 1990.

For the Commission
Frans ANDRIESSEN
Vice-President