COMMISSION DECISION

of 22 February 1990

concerning an application for refund of an anti-dumping duty collected on the import of flat-rolled products of iron or non-alloy steel originating in Mexico and Yugoslavia (Transformados Siderúrgicos, SA)

(Only the Spanish text is authentic)

(90/87/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 2424/88/ECSC of 29 July 1988 on protection against dumped or subsidized imports from countries not members of the European Coal and Steel Community [1], and in particular Article 16 thereof,

Whereas :

A. Procedure

(1) By Decision No 2132/88/ECSC [2] the Commission imposed a definitive anti-dumping duty on imports of certain iron or steel coils originating in Mexico and Yugoslavia and definitively collected provisional anti-dumping duty imposed on those imports. The rate of duty was fixed at ECU 50 per 1 000 kg for Mexico and ECU 64 per 1 000 kg for Yugoslavia.

(2) On 30 November 1988 the Spanish firm Transformados Siderurgicos SA submitted, through the intermediary of the Spanish authorities, an application for the partial refund of the anti-dumping duties definitively collected on imports of rolled products originating in Mexico and Yugoslavia. The duties paid were Ptas [...] and Ptas [...] respectively. The refunds requested were Ptas [...] and Ptas [...] respectively [3]. In view of the fact that the applicant had not claimed nor tried to prove, in accordance with Article 16 of Decision No 2424/88/ECSC, that the duties collected exceeded the effective dumping margin, bearing in mind the application of weighted averages, the Commission informed it that its application could not be accepted.

(3) The applicant had the opportunity to submit its comments prior to the final decision.

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

B. Argument of the applicant

(5) The applicant argued that its claim should have been covered by the provisions of Council Regulation (EEC) No 2336/86 of 24 July 1986 concerning the anti-dumping duties applicable to imports from third countries into Spain and Portugal [4]. The rate of customs duty in force in Spain for the imported products in question (8,9 % at the relevant time) was, during the transitional period prior to Spain's accession to the European Communities, higher than that fixed by the Common Customs Tariff (4,4 %). The sums for which a refund has been requested are equivalent to the difference, on the basis of the abovementioned Regulation No 2336/86. The applicant maintained that if the refund were not granted the Spanish firms would be the victims of discrimination because they would have to bear an additional charge not borne by firms in other Member States and not justified by the objective of the anti-dumping measure.

C. Admissibility

(6) 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 the time-limits.

D. Merits of the claim

(7) The application is unfounded. A refund of anti-dumping duties can be granted only on the basis of proof furnished by the applicant importer that the effective dumping margin is less than the anti-dumping duty paid or is zero. The applicant wrote that it agreed with the size of the dumping margin and how it was determined. The Commission reminded the applicant of the information which had to be produced in order to establish the effective dumping margin, but the applicant merely referred to the invoices and customs documents produced in support of its application, which it proposed to compare with the normal value calcu-

[1] OJ No L 209, 2. 8. 1988, p. 18.
[2] OJ No L 188, 19. 7. 1988, p. 18.
[3] In accordance with Article 8 of Decision No 2424/88/ECSC, which deals with the non-disclosure of business secrets, certain figures have been omitted from the published version of this Decision.
[4] OJ No L 203, 26. 7. 1986, p. 8.

lated during the original investigation. The applicant was reminded that the effective dumping margin is established on the basis of the normal value and the export prices during a period of six months preceding the import in question. The applicant did not attempt to produce information other than that presented with the application.

(8) With regard to the application of Regulation (EEC) No 2336/86, which was the sole object of the applicant's arguments, this is the responsibility of the national administrative or legal authorities, or, if necessary, the Court of Justice of the European Communities. It is therefore not for the Commission to decide whether to apply it, even though the Spanish authorities in their notice accompanying the application to the Commission indicated that Regulation (EEC) No 2336/86 would not apply in the case of anti-dumping duties imposed by virtue of Decision No 2424/88/ECSC. This question has yet to be settled by the Tribunal Económico Administrativo before which the applicant states in its application that it has brought the matter.

(9) The applicant had asked the Commission to ask the Council to amend Regulation (EEC) No 2336/86. The Commission decided not to take that step since the aim of the Regulation was to settle the specific case of the anti-dumping duties already in force prior to the accession of the two new Member States to the Communities.

(10) Consequently, the application is unfounded and must be rejected,

HAS ADOPTED THIS DECISION:

Article 1

The application for the refund of anti-dumping duties submitted by Transformados Siderurgicos SA is hereby rejected.

Article 2

This Decision is addressed to the Kingdom of Spain and Transformados Siderurgicos SA, Polígono Cantarranas, Pancorbo (Burgos), Spain.

Done at Brussels, 22 February 1990.

For the Commission

Frans ANDRIESSEN

Vice-President