II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 9 April 1991

concerning an application for reimbursement of anti-dumping duties collected on imports of certain kinds of compact disc players originating in Japan

(Harman Deutschland)

(Only the German text is authentic)

(91/233/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 112/90 (2) imposed a definitive anti-dumping duty on imports of certain kinds of compact disc players originating in Japan or the Republic of Korea. The anti-dumping duty was set at 32 % for products originating in Japan, including the products of Benytone Corporation.

(2) In April 1990, Harman Deutschland, an independent importer based in Heilbronn, Germany, submitted an application for reimbursement of definitive anti-dumping duties paid on imports of compact disc players produced by Benytone Corporation, the amount involved being DM [...] (3). The applicant did not provide all the information required in order to establish that the duties collected exceeded the actual dumping margin, as stipulated in the Commission notice concerning the reimbursement of anti-dumping duties (4). The Commission gave the applicant a period of time within which to provide additional information in connection with the application. As no additional information had been received by the end of the time allotted, the Commission contacted the exporter direct in order to inform it of the relevant rules and the consequences for the importer of failure to cooperate. The exporter failed, however, to provide any information concerning normal value and the prices of all its consignments released for free circulation in the Community in the six months preceding the imports in question, and the Commission accordingly informed the applicant that in these circumstances the application could not succeed.

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

(4) The Commission informed the Member States and indicated its own point of view on the matter. No Member State raised any objection.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 13, 17. 1. 1990, p. 21.
(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.

B. ARGUMENTS PRESENTED BY THE APPLICANT

(5) The applicant's main argument was that the duties collected exceeded the actual dumping margin.

C. ADMISSIBILITY

(6) The application is admissible, as it was submitted in accordance with the Community's anti-dumping rules, notably with regard to time limits.

D. MERITS

(7) The application cannot be granted. Reimbursement of anti-dumping duties depends on the provision of evidence by the importer making the application that the actual dumping margin is lower than the anti-dumping duty paid, or is non-existent. The applicant was unable to provide the information required to show that the application was well founded, despite the efforts made to obtain such information from the exporter, which must bear the responsibility for this shortcoming. On the expiry of the time allowed for providing the information, the Commission was obliged to conclude that the conditions for granting a reimbursement had not been met.

(8) It follows that the application must be rejected,

HAS ADOPTED THIS DECISION:

Article 1

The application by Harman Deutschland for reimbursement of anti-dumping duties is hereby rejected.

Article 2

This Decision is addressed to the Federal Republic of Germany and Harman Deutschland, Hünderstraße 1, 7100 Heilbronn.

Done at Brussels, 9 April 1991.

For the Commission

Frans ANDRIESSEN

Vice-President