COMMISSION DECISION

of 15 May 1991

concerning applications for the refund of anti-dumping duties collected on certain imports of compact disc players originating in Japan (PIA Hi-Fi Vertriebs GmbH)

(Only the German text is authentic)

(91/284/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) PIA Hi-Fi Vertriebs GmbH imports into the Community compact disc players originating in Japan, manufactured and exported by the firm Accuphase Laboratory.

(2) Council Regulation (EEC) No 112/90 [2] imposed a definitive anti-dumping duty on imports of certain compact disc players originating in Japan and the Republic of Korea. A duty of 32 % was imposed on products originating in Japan, save where otherwise provided. Since Accuphase Laboratory was not among the exporters to which a lower duty was applied, imports into the Community of its compact disc players are subject to a duty of 32 %.

(3) Between February and July 1990, PIA Hi-Fi Vertriebs GmbH, an independent importer based in Weiterstadt, Germany, made five applications for the refund of definitive anti-dumping duties paid on the importation from July 1989 to July 1990 of compact disc players produced and exported by Accuphase Laboratory. The total amount requested is DM [...]. The applications, addressed to the German customs authorities, were forwarded to the Commission. The applicant was asked to present, for the first application, data permitting the calculation of normal value for a period of six months preceding each import operation, as provided for in point I (3) (B) (a) of the Commission notice concerning the reimbursement of anti-dumping duties (hereinafter referred to as 'the notice') [3]. This information covered the period December 1988 to June 1989. The Commission decided to handle the applications submitted between 17 April and 19 July 1990 according to the rules on recurring applications laid down in point I (4) of the notice. The information required for judging the validity of the applications was provided for the period December 1989 to June 1990 inclusive.

(4) The Commission asked the applicant for further information, which was submitted within the time limits. The Commission also visited the premises of Accuphase Laboratory, in Japan, to verify data concerning normal value and export prices, which Accuphase Laboratory had supplied to the Commission at the request of the applicant.

(5) The applicant was informed of the preliminary results of this examination and given an opportunity to comment.

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

B. THE APPLICANT'S ARGUMENTS

(7) Essentially, the applicant argued that it had paid export prices significantly in excess of normal value.

C. ADMISSIBILITY

(8) The applications are admissible.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 13, 17. 1. 1990, p. 21.
[3] OJ No C 266, 22. 10. 1986, p. 2.

D. MERITS OF THE CLAIM

(9) The applications must be accepted in part. Article 16 (1) of Regulation (EEC) No 2423/88 makes it the responsibility of the importer who has paid an anti-dumping duty and is applying for refund of that duty to show that the duties collected exceed the dumping margin calculated for the relevant reference period. This actual dumping margin must normally be calculated using the same method as that applied during the initial investigation.

(10) Accuphase Laboratory did not cooperate in the initial Commission investigation. The Commission was therefore obliged to calculate the dumping margin for the compact disc players produced by this undertaking. The Commission considered that the information supplied by the applicant and the exporter regarding the normal value and export prices of the different models was sufficient for it to calculate correctly the average actual dumping margin.

(11) The Commission calculated normal value on the basis of the price actually paid in normal commercial transactions for the like product intended for consumption in Japan. Accuphase Laboratory asked that the calculation be adjusted to allow for sales made at special prices to promote the launch of new models. The Commission was unable to grant this request, since the sales in question were not made in the course of normal trading.

(12) For each reference period concerned, the Commission compared the average normal value of each model, ex-factory, with the ex-factory export price charged by Accuphase Laboratory for each of the consignments released for free circulation in the Community during the same period. The comparison was made in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88. Due account was taken of differences affecting price comparability. Adjustments requested by Accuphase Laboratory, concerning certain sales overheads, were granted.

(13) With regard to normal value, the request that an adjustment be made for transport costs was granted where it was shown that these costs were directly related to the product and had been incurred in the course of transport from the premises of the exporter to the first independent buyer. An adjustment was also made for storage costs.

A request for an adjustment to take account of credit costs was accepted at the level verified at the premises of Accuphase Laboratory.

A request for an adjustment in respect of guarantees and after-sales service was rejected because it was based on an estimate. These costs could not be shown to be directly related within the meaning of Article 2 (10) (c) (iv) of Regulation (EEC) No 2423/88. It was clear from the investigation that these costs were general costs. Requests for account to be taken of other sales overheads, i.e. promotional and advertising costs and the general sales overheads, were rejected. These costs were not directly related to the sales in question, but were either general administrative costs or could not be described as deductible sales costs as listed in Article 2 (10) (c) of Regulation (EEC) No 2423/88.

The request that account be taken of the salaries paid to sales staff was rejected. This staff was not wholly engaged in direct selling, but was responsible primarily for promotional activities.

(14) The export price was duly adjusted to take into account the transport and storage costs directly related to a product and borne by the exporter from the time the product left the exporter's premises to the time of arrival at its destination in the Community. The export price was also adjusted to take account of commission paid on the sales in question.

(15) The Commission found the actual average dumping margin during the periods under consideration to be lower than the dumping margin used to calculate the level of the duties collected. While Accuphase Laboratory was found to have dumped exports, it had done so at levels lower than the highest dumping margin established in Regulation (EEC) No 112/90. The Commission therefore found the dumping margin to be 14,5 % for the period December 1988 to June 1989 inclusive and 21 % for that from December 1989 to June 1990 inclusive.

E. AMOUNT TO BE REIMBURSED

(16) The amount to be reimbursed to PIA Hi-Fi Vertriebs GmbH, representing the difference between the rate of duty collected and the actual dumping margin, comprises 17,5 % (32 % - 14,5 %) of the value used by the relevant authorities to calculate the level of anti-dumping duty in the case of the imports covered by the application submitted on 14 February 1990, and 11 % (32 % - 21 %) of the value used by the relevant authorities to calculate the level of anti-dumping duty in the case of imports covered by the applications submitted between 17 April and 19 July 1990,

HAS ADOPTED THIS DECISION:

Article 1

The applications for the refund of anti-dumping duties submitted by PIA Hi-Fi Vertriebs GmbH are granted to the amount of 17,5 % of the value used by the relevant authorities to calculate the level of anti-dumping duty in the case of the imports covered by the application submitted on 14 February 1990, and 11 % of the value used by the relevant authorities to calculate the level of anti-dumping duty in the case of imports covered by the applications submitted between 17 April and 19 July 1990.

Article 2

The amounts set out in Article 1 shall be refunded by the German authorities.

Article 3

This Decision is addressed to the Federal Republic of Germany and PIA Hi-Fi Vertriebs GmbH, Rosenweg 6, 6108 Weiterstadt 2, Germany.

Done at Brussels, 15 May 1991.

For the Commission

Frans ANDRIESSEN

Vice-President