II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 3 June 1992

concerning applications for the refund of anti-dumping duties collected on certain imports of certain ball bearings originating in Singapore (NMB France Sarl)

(Only the French text is authentic)

(92/332/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 19 July 1984 by Council Regulation (EEC) No 2089/84 [2], a definitive anti-dumping duty of 33,89 % was imposed on imports of certain ball bearings manufactured and exported by the Minebea group of companies and originating in Singapore. In September 1989 a review of the above measures was opened [3] in accordance with Article 15 (3) of Regulation (EEC) No 2423/88 and the measure has remained in force pending the outcome of this review.

(2) NMB France Sarl, a wholly-owned subsidiary of Minebea Co. Ltd, Japan, applied, on a regular basis, for the refund of anti-dumping duties. This Decision concerns the refund claims lodged for the following amounts of anti-dumping duties paid between October 1990 and September 1991, namely [...] [4].

(3) Following submissions by the applicant with regard to the dumping margin during the above reference period, the Commission sought and verified all information deemed to be necessary for the purposes of a determination and carried out investigations at the premises of the two exporters (NMB Singapore Ltd and Pelmec Singapore Ltd) and the sales company (Minebea Singapore Ltd) in Singapore. All these companies are owned by Minebea Co. Ltd, Japan.

Investigations were also carried out at the premises of related importers of Minebea Co. Ltd, Japan in the Community, including the applicant. The applicant complied with all requests for additional information to the satisfaction of the Commission and in accordance with the Commission notice concerning the reimbursement of anti-dumping duties [5] (hereinafter referred to as 'the notice'). Subsequently the applicant was informed of the preliminary results of this examination and given an opportunity to comment on them. It did so and the comments were taken into consideration prior to this Decision.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 193, 21. 7. 1984, p. 1.
[3] OJ No C 240, 20. 9. 1989, p. 4.
[4] In the published version of the Decision some figures have been omitted pursuant to the provisions of Article 8 of Regulation (EEC) No 2423/88 concerning non-disclosure of business secrets.
[5] OJ No C 266, 22. 10. 1986, p. 2.

(4) The Commission informed the Member States and gave its opinion on the matter. No Member State disagreed with this opinion.

B. ARGUMENT OF THE APPLICANT

(5) The applicant has based its claims on the allegation that, for certain sales in the Community, export prices were such that either dumping did not exist or that dumping existed at a level lower than the level of the definitive duty of 33,89 %.

C. ADMISSIBILITY

(6) The applications are admissible since they were introduced in conformity with the relevant provisions of the Community's anti-dumping legislation, in particular that concerning time limits.

D. MERITS OF THE CLAIM

(7) Pursuant to Article 16 (1) of Regulation (EEC) No 2423/88 and Part II of the notice, the applicant showed that the duty collected exceeded the dumping margins to varying degrees, depending on the shipment and the ball-bearing type concerned, partly as a result of a decrease in normal value.

(8) Concerning the methodology used for establishing dumping margins, the Commission had to take account of changes in the domestic market in Singapore. During the original investigation domestic sales were minimal and normal value had consequently to be constructed using costs of production and a fixed percentage for profit. During subsequent verification visits to Singapore, the Commission established that substantial domestic sales were made, in excess of the volume of total exports to the Community, and that the profit made on these representative sales was much higher than the estimated profit margins originally used for constructing the normal value. Article 16 of Regulation (EEC) No 2423/88 provides that 'all refund calculations shall be made in accordance with the provisions of Article 2 or 3 and shall be based, as far as possible, on the same method applied in the original investigation, in particular, with regard to any application of averaging or sampling techniques.' This means that the actual normal value shall be established in a refund proceeding by respecting the hierarchy of methods as provided for by Article 2 (3) of that Regulation which requires that actual domestic prices should be used in all cases where they are available, the construction of the normal value being only a substitute for actual prices when these cannot be used. The Commission therefore decided to employ average domestic sales prices as a basis for normal value.

(9) Since all importers are related to the exporters, it was necessary to calculate the actual dumping margin by comparing the normal value with an export price constructed in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88. That Article provides that an export price is constructed on the basis of the price at which the imported product is first resold to an independent buyer and that allowance shall be made for all costs incurred by the related importer between importation and resale, including customs duties, any anti-dumping duties and other taxes, and for a reasonable profit margin. Normal value and export prices were compared, according to the provisions of Article 2 (9) of Regulation (EEC) No 2423/88, and, since the importers are all related companies, a weighted-average dumping margin was calculated on the basis of all export transactions to the Community involving ball bearings originating in Singapore (i.e. a single weighted-average dumping margin for all related importers of Minebea Co. Ltd — NMB GmbH, NMB Italia Srl, NMB UK Ltd and NMB France Sarl).

(10) On this basis, it was found that the applications were partly founded. The actual dumping margin established for the reference period was 24,0 %.

(11) Consequently, the amount to be refunded is [. . .].

(12) The applicant claimed, however, that a higher amount should be refunded. It raised objections concerning the legality of a deduction of anti-dumping duties paid by importing companies related to the exporter in constructing the export prices (see recital 9). These objections are the same as those raised in Commission Decisions 88/327/EEC [1], 88/328/EEC [2] and 88/329/EEC [3] concerning refunds to other related importers of Minebea of anti-dumping duties paid during the years 1985 and 1986 which were the subject of an appeal before the Court of Justice of the European Communities. The applicant referred expressly to the submissions made by the other importers in this earlier refund proceeding and in their written submissions before the Court.

[1] OJ No L 148, 15. 6. 1988, p. 26.
[2] OJ No L 148, 15. 6. 1988, p. 28.
[3] OJ No L 148, 15. 6. 1988, p. 30.

In its judgment of 10 March 1992 on this appeal, the Court dismissed the application (1).

Under these circumstances, the applicant's request for the refund of an additional amount has to be rejected,

HAS ADOPTED THIS DECISION:

Article 1

The refund applications submitted by NMB France Sarl, Argenteuil, France, for the period October 1990 to September 1991 are granted in respect of the amount of [...] and rejected for the remainder.

Article 2

The amount set out in Article 1 shall be refunded by France.

Article 3

This Decision is addressed to the French Republic and NMB France Sarl, Argenteuil, France.

Done at Brussels, 3 June 1992.

For the Commission

Frans ANDRIESSEN

Vice-President

(1) Case 188/88, NMB v. Commission, not yet published.