COMMISSION DECISION

of 8 February 1994

concerning an application for the refund of anti-dumping duties collected on certain imports of certain polyester yarns (man-made staple fibres) originating in Indonesia (Pax Yarns Ltd)

(Only the English text is authentic)

(94/134/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 Community [1], and in particular Article 16 thereof,

Whereas :

A. PROCEDURE

(1) On 31 March 1992 by Council Regulation (EEC) No 830/92 [2], a definitive anti-dumping duty of 11,9 % was imposed on imports of certain polyester yarns (man-made staple fibres) originating in Taiwan, Indonesia, India, the People's Republic of China and Turkey.

(2) Pax Yarns Ltd, Cambridge Road, Whetstone, UK-Leicester LE8 3LH, importer of polyester yarns produced and exported by PT Indo Rama Synthetics, an Indonesian exporter (hereinafter referred to as 'the exporter'), subject to the anti-dumping duty of 11,9 %, claimed on 19 June 1992 a refund of anti-dumping duties paid in the period 3 October 1991 to 30 April 1992 and lodged a number of other applications on 24 August, 23 September, 5 November 1992 and 11 January 1993 for the period 1 May 1992 to 30 November 1992. In accordance with the Commission notice concerning the reimbursement of anti-dumping duties [3] (hereinafter referred to as 'the notice'), the Commission considered that as the refund request related to more than three consignments in a period exceeding six months, it should be treated as a recurring application in the context of point I.4 of the notice.

The total refund claimed by Pax Yarns Ltd for anti-dumping duties paid between 3 October 1991 and 30 April 1992 (the first reference period), and between 1 May 1992 and 30 November 1992 (the second reference period), amounts to (£ ...) [4].

(3) Following submissions by the applicant with regard to the margin of dumping during the above reference periods, 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 exporter in Indonesia.

Subsequently, the applicant was informed of the preliminary results of this examination and given an opportunity to comment. Its observations were taken into account where considered necessary.

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

B. ARGUMENTS OF THE APPLICANT

(5) The applicant based its claim on the allegation, supported by data concerning normal value and export prices to the Community, that the export prices from the exporter were such that dumping did not exist.

C. ADMISSIBILITY

(6) The application is admissible since it was 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 point II of the notice, the applicant showed, and the verifications carried out confirmed, that the export prices were, with the exception of a small number of transactions, not lower than the normal value for sales of the like product in Indonesia.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 88, 3. 4. 1992, p. 1.
[3] OJ No C 266, 22. 10. 1986, p. 2.

[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.

(8) Concerning the methodology applied in establishing the dumping margin, account had to be taken of the fact that the exporter concerned had not cooperated during the original anti-dumping proceeding. It was therefore necessary to determine the methodology in accordance with Article 2 of Regulation (EEC) No 2423/88.

(9) (a) *Normal value*

Where a particular product type exported to the Community was sold on the domestic market in the ordinary course of trade, and in sufficient quantities, normal value was established on the basis of the weighted average domestic price actually paid or payable for that product type.

Where a particular product type exported to the Community was not sold or was sold in insufficient quantities on the domestic market, normal value was constructed on the basis of the costs of production plus a reasonable profit margin. The selling general and administrative expenses included in the cost of production and the profit margins were calculated by reference to the expenses incurred and the profits realized on sales of other types of the like product on the domestic market, in accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88.

(b) *Export price*

All shipments of the product concerned during the reference periods made by the exporter and released for free circulation in the Community were considered.

No importer in the Community of the product exported by the exporter was related to the latter. Export prices were thus established on the basis of the price paid or payable for the product sold for export to the Community.

(c) *Comparison*

Normal value and export prices were compared according to the provisions of Article 2 (9) of Regulation (EEC) No 2423/88.

(10) On this basis, it was found that the application was justified and that the actual dumping margin for the reference periods was negligible (less than 0,1 %).

(11) Amount of the refund: since no actual dumping margin was found, the amounts to be refunded are (£ ...), corresponding to the full amount of anti-dumping duty paid for those imports released for free circulation in the Community between 3 October 1991 and 30 November 1992,

HAS ADOPTED THIS DECISION:

Article 1

The application for the refund of anti-dumping duties submitted by Pax Yarns Ltd for the period 3 October 1991 to 30 November 1992 is granted for the amount of (£ ...).

Article 2

The amount set out in Article 1 shall be refunded by the United Kingdom.

Article 3

This Decision is addressed to the United Kingdom and Pax Yarns Ltd, Cambridge Road, Whetstone, UK-Leicester LE8 3LH.

Done at Brussels, 8 February 1994.

For the Commission

Leon BRITTAN

Member of the Commission