II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 16 November 1994

concerning an application for the refund of anti-dumping duties collected on certain imports of certain magnetic disks (3,5" microdisks) originating in the People's Republic of China

(Only the English text is authentic)

(94/764/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 Economic Community [1], as last amended by Council Regulation (EC) No 522/94 [2], and in particular Article 16 thereof,

Whereas :

I. PROCEDURE

A. General

(1) On 18 October 1993, by Regulation (EEC) No 2861/93 [3], a definitive anti-dumping duty of 39,4 % was imposed on imports of certain magnetic disks (3,5" microdisks) originating in Japan, Taiwan and the People's Republic of China.

(2) Verbatim Limited SA of Limerick, Ireland, an importer of 3,5" microdisks produced and exported by Swire Magnetics Holdings Limited, an exporter in the People's Republic of China (hereinafter referred to as 'the exporter'), subject to an anti-dumping duty of 39,4 %, claimed, on 12 January and 10 March 1994, a refund of anti-dumping duties paid in the period 24 November 1993 to 15 February 1994.

B. Admissibility

(3) The application is admissible, since it was introduced in conformity with the relevant provisions of Community anti-dumping legislation, in particular those concerning time limits.

(4) The applicant's claim was based on the allegation, supported by *prima facie* evidence on normal value and export prices for sales to the Community, that export prices from the exporter were such that dumping either did not exist, or that the rate of duty appropriate to the imports in question was lower than the 39,4 % rate in application.

(5) The issue of individual treatment of exporters in the People's Republic of China, was examined in the light of the findings on the matter in recital (8) of the Regulation imposing definitive duties. In view of the general principles set out in that recital which apply also to refund applications, it appears doubtful that, as a general rule, such applications can lead to a recalculation of normal value for the applicant alone. In the present case, however, the Commission has taken account of the exceptional circumstances referred to in the application.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 66, 10. 3. 1994, p. 10.
[3] OJ No L 262, 21. 10. 1993, p. 4.

Indeed, the application involves past transactions between a captive supplier and sole customer and the exporter ceased producing and trading the product concerned in the first quarter of 1994. This means that the main reasons for not granting individual treatment, i.e. the possibility of circumventing the duties by channelling exports through sources with lower rates and the risk of undermining the remedial effect of the anti-dumping measures taken, do not exist here. The acceptance of the application does not, under these conditions, go counter to the general principle mentioned above regarding the treatment of exporters from non-market economy countries.

C. Nature of the applications

(6) In accordance with the Commission notice concerning the reimbursement of anti-dumping duties [1] (hereinafter referred to as 'the notice'), the Commission considered that, as the refund request related to more than three consignments in a period of at least six months, i.e. between 1 April and 30 September 1993, it should be treated as a recurring application in the context of point I.4 of the notice.

D. Investigation

(7) Following submissions by the applicant the Commission sought and verified all the information it deemed necessary for the purposes of a determination.

As the People's Republic of China is a non-market economy, the Commission sought and received the cooperation of a producer of 3,5″ microdisks in Taiwan, the analogue market economy selected for the establishment of normal value in the anti-dumping proceeding referred to at recital (1). The Commission carried out investigations at the premises of both the cooperating producer in Taiwan and the applicant.

(8) Subsequently, the applicant was informed of the preliminary results of the Commission's examination and given the opportunity to comment. Its observations were taken into account as appropriate.

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

II. MERITS OF THE CLAIM

(10) Pursuant to Article 16 (1) of Regulation (EEC) No 2423/88 (hereinafter referred to as the 'basic Regulation') and point II of the notice, the applicant showed, and the verifications carried out confirmed, that the duty collected exceeded the actual dumping margin.,

(11) Concerning the methodology applied in establishing the dumping margin, account had to be taken of the fact that the exporter concerned had not exported during the investigation period in the original anti-dumping proceeding.

(12) (a) *Normal value*

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

Where a particular product type exported to the Community was not in the ordinary course of trade or was sold in insufficient quantities on the analogue market, normal value was constructed on the basis of the cost of production plus a reasonable profit margin. The selling, general and administrative expenses included in the cost of production and the profit margin were calculated by reference to the expenses incurred and profits realized on sales of other types of the like product on the analogue market in accordance with Article 2 (3) (b) of the basic Regulation.

(b) *Export price*

All export sales by the exporter were made to the applicant, an original equipment manufacturer (OEM) customer in the Community, under an exclusive agreement whereby the price actually charged reflected the fact that the assembled product contained components supplied by the applicant at no charge to the exporter. This price, therefore, could not be considered reliable and the export price was constructed in accordance with the provisions of Article 2 (8) (b) of the basic Regulation.

To that end, it was considered reasonable to add to the price actually charged an amount to represent the cost and profit realizable on the component concerned, on the basis of information provided by the applicant.

(c) *Comparison*

Normal value, by product type was compared with the export price for the corresponding type, transaction-by-transaction on an ex-works basis at the appropriate level of trade. For the purpose of a fair comparison, adjustments were made, in accordance with Article 2 (9) and (10) of the basic Regulation in respect of differences in physical characteristics and selling expenses for which satisfactory evidence was submitted.

[1] OJ No C 266, 21. 10. 1986, p. 2.

(13) On this basis, it was found that the application was justified, and that the actual dumping margin was 12,4 %.

In the light of this finding, the amount to be refunded is 27 % of the value used by the authorities concerned to calculate the anti-dumping duty on imports released into free circulation in the Community between 24 November 1993 and 15 February 1994,

HAS ADOPTED THIS DECISION :

Article 1

The application submitted by Verbatim relating to the refund of anti-dumping duties paid in the period 24 November 1993 to 15 February 1994 is granted for an amount represented by 27 % of the value used by the appropriate authorities to calculate the anti-dumping duty on the relevant imports released into free circulation in the Community in the said period.

Article 2

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

Article 3

This Decision is addressed to Ireland and Verbatim Limited SA, Limerick, Ireland.

Done at Brussels, 16 November 1994.

For the Commission

Leon BRITTAN

Member of the Commission