COMMISSION DECISION

of 12 December 1994

concerning applications for the refund of anti-dumping duties collected on certain imports of certain ball bearings originating in Thailand (NMB France Sàrl, NMB GmbH, NMB Italia Srl and NMB UK Ltd)

(Only the English, French, German and Italian texts are authentic)

(94/951/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 Regulation (EC) No 522/94 [2], and in particular Article 16 thereof,

Whereas:

A. PROCEDURE

(1) On 9 October 1990 by Council Regulation (EEC) No 2934/90 [3], a definitive anti-dumping duty of 6,7 % was imposed on imports of certain ball bearings originating in Thailand.

(2) Since April 1992 the importers, NMB France Sàrl, NMB GmbH, NMB Italia Srl and NMB UK Ltd, related subsidiaries of Minebea Co. Ltd Japan, have lodged regular monthly refund claims for anti-dumping duties paid on their imports of ball bearings originating in Thailand and manufactured by NMB Thai, Pelmec Thai and NMB Hi-Tech, all of which are owned by Minebea.

(3) This Decision concerns refund claims for anti-dumping duties paid on the applicants' imports made between April 1992 and December 1992.

The amounts of duty paid were as follows [4]:

— NMB France FF [. . .] (ECU [. . .]),

— NMB GmbH DM [. . .] (ECU [. . .]),

— NMB Italia Lit [. . .] (ECU [. . .]),

— NMB UK £ [. . .] (ECU [. . .]).

(4) Following submissions by the applicants with regard to the dumping margins 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 three exporters (NMB Thai, Pelmec Thai and NMB Hi-Tech) in Thailand.

Investigations were also carried out at the premises of the applicant companies. The applicants 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].

Subsequently the applicants were informed of the results of the Commission's examination and given an opportunity to comment on them. They did so, and their comments, where appropriate, were taken into consideration prior to this Decision.

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

B. ARGUMENT OF THE APPLICANTS

(6) The applicants have based their claims on the allegation that, for certain sales in the Community, export prices were such that dumping existed at a level lower than the level of the definitive anti-dumping duty of 6,7 %.

C. ADMISSIBILITY

(7) With regard to NMB France, the refund applications concern, *inter alia,* certain transactions for which the refund claim was made more than three months after the date on which the amount of definitive duty was determined. For those transactions the refund claim was considered inadmissible in accordance with Article 16 (2) of Regulation (EEC) No 2423/88. The transactions involved were all those on which anti-dumping duties were paid in July 1992 and three transactions involving duties of FF [. . .] paid in September 1992. There was also one overclaim of FF [. . .] in December 1992.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 66, 10. 3. 1994, p. 10.
(3) OJ No L 281, 12. 10. 1990, p. 1.
(4) [. . .]: In the published version of this Decision, points between square brackets indicate figures which have been omitted pursuant to the provisions of Article 8 of Regulation (EEC) No 2423/88.
(5) OJ No C 266, 22. 10. 1986, p. 2.

As regards the other transactions concerned, the applications are admissible since they were introduced in conformity with the relevant provisions of the Community's anti-dumping legislation, in particular those concerning time limits.

D. MERITS OF THE CLAIMS

(a) *Reference period*

(8) The reference period was April 1992 to December 1992, as the applications were recurrent over this period.

(b) *Normal value*

(9) As in the original investigation, in the absence of significant domestic sales, normal value was constructed. Since there were no other exporters or producers of ball bearings in Thailand and no comparable firms in the same business sector, SG&A and profit were determined on the basis of Minebea Singapore's sales of Thai-made bearings on the Singapore market, which was considered to be the most 'reasonable basis' in accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88. It also corresponded most closely to the transactions used to establish SG&A and profit in the original investigation, which were sales of Thai-made bearings made to an independent customer in Singapore, most of which were shipped back to Thailand. Such sales for re-shipment to Thailand are no longer made.

(c) *Export price*

(10) Since the importers are related to the exporters concerned, export prices were constructed pursuant to Article 2 (8) (b) of Regulation (EEC) No 2423/88.

(d) *Comparison and dumping margin*

(11) Normal value and export price were compared on a type-by-type and transaction-by-transaction basis, at the same level of trade, following adjustments made in accordance with Article 2 (10) of Regulation (EEC) No 2423/88. On this basis, the margin of dumping was established at 7,15 %. Since this is in excess of the 6,7 % anti-dumping duty rate, the refund claims are considered to be unfounded.

(e) *Argument of applicants*

(12) The applicants claimed, however, that they should be entitled to a partial refund, alleging that the dumping margin should in fact be less than the 6,7 % duty rate. As in earlier refund investigations concerning imports from their related exporters in Singapore [1], they based this allegation on the argument that anti-dumping duty paid by the importer should not be deducted as a cost when constructing the export price. Following the judgment of the Court of Justice of 10 March 1992 [2], which dismissed the applications of the importers regarding refund claims concerning Singapore, the Commission confirms that the anti-dumping duty should, in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88, be deducted when constructing export price as a cost incurred between importation and resale, and rejects the request for a partial refund,

HAS ADOPTED THIS DECISION:

Article 1

The refund applications submitted by NMB France Sàrl, NMB GmbH, NMB Italia Srl and NMB UK Ltd, for the period April 1992 to December 1992 are rejected.

Article 2

This Decision is addressed to the French Republic, the Federal Republic of Germany, the Italian Republic and the United Kingdom of Great Britain and Northern Ireland, and to NMB France Sàrl, Argenteuil, France; NMB GmbH, Langen, Germany; NMB Italia Srl, Mazza di Rho, Italy; NMB UK Ltd, Bracknell, Berkshire, United Kingdom.

Done at Brussels, 12 December 1994.

For the Commission
Sir Leon BRITTAN
Member of the Commission

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[1] OJ No L 185, 4. 7. 1992, p. 35.
[2] Case C-188/88, *NMB (Deutschland) GmbH* v. *Commission*, [1992] ECR I-1689.