COMMISSION DECISION

of 21 December 1994

concerning applications for refund of anti-dumping duties collected on imports of certain compact disc players originating in Japan (Amroh BV, PIA Hi-fi)

(94/992/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,

I. PROCEDURE

(1) Between May 1992 and July 1993, Amroh BV and PIA Hi-fi, both independent importers respectively based in Weesp (Netherlands) and Weiterstadt (Germany) made nine applications for the refund of definitive anti-dumping duties imposed by Council Regulation (EEC) No 112/90 [3] on certain compact disc players originating in Japan and paid by them on the importation from May 1992 to June 1993 of compact disc players produced and exported by Accuphase Laboratory. They argued that they had paid export prices significantly in excess of normal value. Their applications are admissible, in particular concerning time limits since they were introduced within the three months deadline set by the provisions of Article 16 of Regulation (EEC) No 2423/88.

(2) Three of the applications of Amroh BV pertained to goods imported from May to July 1992, a period already covered by a Commission Decision [4] concerning applications for refund of anti-dumping duties collected on imports of compact disc players originating in Japan. That Decision, where a refund was granted to the amount of 16,9 % of the value used by the relevant authorities for calculating the amount of anti-dumping duty, should also apply to those three transactions since their inclusion in the calculation has no impact on the actual dumping margin for the period considered.

(3) The Commission decided to handle the other applications, for which importation took place between February 1993 and June 1993, according to the rules on recurring applications laid down in point I (4) of the Commission notice concerning the reimbursement of anti-dumping duties [5]. The information required for judging the validity of the applications was provided for the period 21 December 1992 to 20 June 1993 inclusive and sent direct to the Commission by Accuphase Laboratory at the applicants' request.

(4) The Commission sought and verified all information it deemed to be necessary for the purpose of the examination of the refund applications.

(5) The refund applicants have been informed of the results of the examination of their requests. A reasonable period of time was granted to make representations on the above information and due account has been taken of these representations where considered appropriate.

II. PRODUCT UNDER CONSIDERATION

(6) The definition of the product under considereration is identical to that contained in Regulation (EEC) No 112/90, as amended by Regulation (EEC) No 819/92 [6]. The product considered is certain compact disc players falling within CN codes ex 8519 31 00, ex 8519 39 00, ex 8519 99 10, ex 8520 31 90, ex 8520 39 10, ex 8520 39 90 and ex 8527 31 91 (Taric codes 8519 31 00*10, 8519 39 00*10, 8519 99 10*10, 8520 31 90*30, 8520 39 10*10, 8529 39 90*10 and 8527 31 91*10) [7] (hereafter referred to as CDP's).

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 66, 10. 3. 1994, p. 10.
(3) OJ No L 13, 17. 1. 1990, p. 21.
(4) OJ No L 150, 22. 6. 1993, p. 44.
(5) OJ No C 266, 22. 10. 1986, p. 2.
(6) OJ No L 87, 2. 4. 1992, p. 1.
(7) Stand-alone sound reproducers with a laser optical reading system and with external dimensions of at least 216 × 45 × 150 mm, equipped to accommodate up to a maximum of 10 compact discs, including sound reproducers which may be incorporated in a rack system but can nevertheless operate alone separately from the rack, with their own power supply and commands, functioning with AC mains and supply of usually 110/120/220/240 V and not capable of operating with a power supply of 12 V DC or less.

III. REFUND FINDINGS

A. Merits of the claim

(7) Article 16 (1) of Regulation (EEC) No 2423/88 makes it the responsibility of the importer which 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 should, as far as possible, be calculated using the same method as that applied during the initial investigation.

(8) The Commission considered that the information supplied by the applicants and the exporter regarding normal value and the export prices of the different CDP models was sufficient to calculate correctly the weighted average actual dumping margin.

1. *Normal value*

(9) One of the CDP models produced by Accuphase Laboratory was sold on the domestic market in sufficient quantities to be representative and at prices which permitted recovery of all costs reasonably allocated in the normal course of trade. Accordingly, normal value was determined on the basis of the weighted average prices of this model of CDP net of any rebates or discounts. For the other models, normal value was constructed in conformity with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88.

2. *Export price*

(10) Since Accuphase Laboratory sold CDP's directly to independent importers in the Community, export prices were determined on the basis of the net prices actually paid or payable for the products sold for export to the Community.

3. *Comparison*

(11) For the purpose of a fair comparison between normal value and export price and in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88, the Commission took account of differences affecting price comparability where a direct relationship of these differences to the sales under consideration could be satisfactorily demonstrated. Adjustments were in particular made in respect of freight, insurance, handling expenses and sales personnel salaries. All comparisons were made at the same level of trade, at the ex-factory level.

(12) As far as differences in guarantee costs are concerned, the Commission established that the adjustment claimed by the applicant to take account of the level of these domestic costs was partly based on transactions falling outside the investigation period. Therefore, the Commission calculated the average cost for this item on all sales of stand-alone CDP's for the relevant period and adjusted the normal value on this basis.

(13) The adjustments claimed for credit costs and commissions were only made in so far as they were sufficiently evidenced.

(14) Accuphase Laboratory also made a claim for sales promotion expenses. However, Article 2 (10) (c) of Regulation (EEC) No 2423/88 does not provide for adjustments for differences in such expenses which are not directly related to the sales under consideration since such differences do not affect price comparability and the claim was, accordingly, rejected.

4. *Dumping margin*

(15) For the reference period concerned, the Commission compared the weighted average normal value of each CDP model, ex-factory, with the ex-factory export price charged by Accuphase Laboratory for each of the consignments sold for export to the Community during the same period. The Commission found the average dumping margin during the period under consideration to be lower than the duty established in Regulation (EEC) No 112/90 as being applicable to this producer. The Commission found the weighted average dumping margin, expressed as a percentage of total cif value, for the period under consideration to be 15,7%. Consequently, the applicants have shown that the duty collected at a rate of 32% exceeds the actual dumping margin for the period concerned.

B. Amounts to be reimbursed

(16) The amounts to be reimbursed to the applicants, represented the difference between the rate of duty collected and the actual dumping margin, are equal to 16,3% (32% minus 15,7%) of the value used by the relevant authorities to calculate the level of anti-dumping duty.

(17) For the transactions mentioned in recital 2, the amounts to be reimbursed are equal to 16,9% of the value used by the relevant authorities to calculate the level of the anti-dumping duty.

(18) The applicants were informed of the results of this examination and made no comments. The

Commission informed the Member States and gave its opinion on the matter. No Member State raised any objection,

HAS ADOPTED THIS DECISION:

Article 1

The applications for the refund of anti-dumping duties submitted by Amroh BV and PIA Hi-fi Vertriebs GMBH and for which importation took place within the period 21 December 1992 to 20 June 1993 are granted to the amount of 16,3 % of the value used by the relevant authorities for calculating the amount of anti-dumping duty.

The applications for the refund of anti-dumping duties submitted by Amroh BV and for which importation took place from May to July 1992 are granted to the amount of 16,9 % of the value used by the relevant authorities for calculating the amount of anti-dumping duty.

Article 2

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

Article 3

This Decision is addressed to the Kingdom of the Netherlands, the Federal Republic of Germany and the applicants:

— Amroh BV, Hogeweyselaan 227, 1382 JL Weesp, Netherlands,

— PIA Hi-fi Vertriebs Gmbh, Rosenweg 6, 64331 Weiterstadt, Germany.

Done at Brussels, 21 December 1994.

For the Commission

Leon BRITTAN

Member of the Commission