II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 15 September 1995

concerning an application for the refund of anti-dumping duties collected on imports of espadrilles originating in the People's Republic of China (Importmaatschappij Intermedium BV)

(Only the Dutch text is authentic)

(95/381/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 1251/95 [2], and in particular Article 23 thereof,

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 [3], as last amended by Regulation (EC) No 522/94 [4], and in particular Article 16 thereof,

Whereas :

A. PROCEDURE

(1) Council Regulation (EEC) No 1812/91 [5] imposed a definitive anti-dumping duty on import of espadrilles originating in the People's Republic of China and definitively collected the provisional anti-dumping duty imposed on those imports. The rate of duty was set at 70,3 % for espadrilles falling within CN code ex 6404 19 90 (additional Taric code-8547).

(2) On 5 April 1993, an application was made under Article 16 of Regulation (EEC) No 2423/88 for the refund of definitive anti-dumping duties paid by Importmaatschappij Intermedium BV on the importation on 3 and 18 March 1992 of two shipments of espadrilles originating in the People's Republic of China.

(3) On 9 December 1994, the Commission disclosed to the applicant the main facts and considerations on the basis of which it intended to declare the application inadmissible. The applicant was given the opportunity to submit comments prior to the final decision. No comments were received.

(4) The Commission informed the Member States and gave its opinion on the matter. No Member State raised any objection.

B. ADMISSIBILITY

(5) The application is inadmissible for the following reasons :

Firstly, Article 16 (1) of Regulation (EEC) No 2423/88 states that where an importer can show that the duty collected exceeds the actual dumping margin, the excess amount shall be reimbursed. In

[1] OJ No L 349, 31. 12. 1994, p. 1.
[2] OJ No L 122, 2. 6. 1995, p. 1.
[3] OJ No L 209, 2. 8. 1988, p. 1.
[4] OJ No L 66, 10. 3. 1994, p. 10.
[5] OJ No L 166, 28. 6. 1991, p. 1.

order to show this, the importer must, in accordance with the Commission notice concerning the reimbursement of anti-dumping duties [1], and in particular point 1.3 thereof, submit information permitting the Commission to calculate whether the dumping margin has been reduced or eliminated. If the application is incomplete, the missing information must be furnished, whether by the applicant itself, by the exporter or by the other importers, within a reasonable time-limit. For this particular application, given that the People's Republic of China is a non-market economy country, information should, in principle, have been provided regarding the prices of all exports of espadrilles from the People's Republic of China to the Community and regarding the estimated normal value for a reasonable reference country, preferably that used in the original investigation, for a period of six months preceding the two imports for which a refund was requested. Despite repeated contacts with the applicant and the Commission's own efforts to obtain the necessary information, such information was not supplied within a reasonable time to a degree permitting the Commission to determine whether the duty collected for these two imports exceeded the actual dumping margin.

Secondly, according to Article 16 (2) of Regulation (EEC) No 2423/88, the application must be submitted within three months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities. This means that for the two imports concerned, the application should have been made not later than 2 and 17 June 1992 respectively. Within these time-limits, the applicant contested in several letters to the Netherlands customs authorities the imposition of the anti-dumping duty, for reasons relating to the alleged origin and nature of the product imported. The applicant did not, however, at the time request reimbursement of the anti-dumping duty paid, or part thereof, for the reason that the dumping margin was allegedly lower than the duty paid. In fact, the first letter clearly mentioning a request for a refund pursuant to Article 16 of Regulation (EEC) No 2423/88 dates only from 5 April 1993. Initially, the Commission reserved its judgment on whether the application had been made within the statutory time-limits. It has now concluded that the letters to the Netherlands authorities relied on by the applicant cannot be recognized as refund applications within the meaning of Article 16 of Regulation (EEC) No 2423/88, as they do not clearly state that a refund of anti-dumping duties is requested on grounds of the alleged lowering or elimination of the dumping margin,

HAS ADOPTED THIS DECISION:

Article 1

The application for the refund of anti-dumping duties submitted by Importmaatschappij Intermedium BV for imports on 3 and 18 March 1992 of espadrilles originating in the People's Republic of China is hereby declared inadmissible.

Article 2

This Decision is addressed to the Kingdom of the Netherlands and to Importmaatschappij Intermedium, Hoofddorp, the Netherlands.

Done at Brussels, 15 September 1995.

For the Commission

Karel VAN MIERT

Member of the Commission

[1] OJ No C 266, 22. 10. 1986, p. 2.