COMMISSION DECISION

of 8 January 1998

concerning an application for the refund of anti-dumping duties collected on imports of woven polyolefin sacks originating in the People's Republic of China

(Only the English text is authentic)

(98/72/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as amended by Regulation (EC) No 2331/96 [2] (hereafter referred to as the Basic Regulation), and in particular Article 11 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) Council Regulation (EEC) No 3308/90 [3] of 15 November 1990 imposed a definitive anti-dumping duty on imports of woven polyolefin sacks falling within CN code ex 6305 31 91 and originating in the People's Republic of China. The rate of the definitive duty was set at 43,4 %.

(2) Council Regulation (EEC) No 2346/93 [4] of 23 August 1993 amended the above Regulation and raised the duty rate to 85,7 %.

(3) On 18 May 1995, Envopak Group Ltd imported one shipment of DHL courier bags made from woven polypropylene originating in China. The goods concerned were declared within tariff heading 6305 39 00. This classification was challenged by UK Customs and Excise which determined on 26 May 1995 that the goods' proper classification was within heading 6305 31 91 and that they were therefore subject to the anti-dumping duty of 85,7 %. The anti-dumping duties were finally paid on 25 July 1995.

(4) The final purchaser of the goods, the international courier company DHL submitted an appeal on 20 June 1995 to UK Customs and Excise for a Departmental Review under the UK law implementing Article 245 of the Community Customs Code against the imposition of the anti-dumping duty, claiming that the goods should be classified within customs heading 4202 as travel bags. The classification within customs heading 6305 31 91 was confirmed by this review on 28 June 1995.

(5) Envopak subsequently lodged a formal Notice of Appeal on 2 August 1995 to the VAT and Duties Tribunal set up pursuant to Article 245 of the Community Customs Code claiming that the goods concerned should be classified within heading 4202. The Tribunal heard the appeal on 7 December 1995 and confirmed on 16 January 1996 that the classification within tariff heading 6305 31 91 was correct.

(6) By Notice of Initiation No 95/C 271/03 [5] and following a complaint lodged by the European Association for Textile Polyolefins, the Commission initiated, on 17 October 1995, a review pursuant to Article 11(2) and (3) of Council Regulation (EC) No 3283/94 of the anti-dumping measures in force on imports of woven polyolefin sacks originating in the People's Republic of China.

On 21 March 1996, Envopak Group Ltd made a submission to the Commission that the goods concerned did not fall within the scope of Regulation (EEC) No 3308/90. The Commission confirmed that it considered that, in the framework of the review, the goods concerned fell within the scope of Regulation (EEC) No 3308/90 and informed Envopak Group Ltd on 20 June 1996.

(7) On 16 July 1996 Envopak Group Ltd lodged an application pursuant to Article 11(8) of the Basic Regulation for the refund of the definitive anti-dumping duties paid on the importation of a shipment of woven polyolefin sacks, originating in the People's Republic of China, on 18 May 1995.

(8) On 30 June 1997, the Commission disclosed to the applicant the main facts and considerations on the basis of which it intended to declare the

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 317, 6. 12. 1996, p. 1.
[3] OJ L 318, 17. 11. 1990, p. 1.
[4] OJ L 215, 25. 8. 1993, p. 3.
[5] OJ C 271, 17. 10. 1995, p. 3.

application inadmissible. The applicant was given the opportunity to submit comments prior to the final decision. The applicant commented that it found that the Commission had inappropriately dealt with the issue of the like product in the framework of the refund procedure.

B. **ARGUMENTS OF THE APPLICANT**

(9) The applicant claims in its applications pursuant to Article 11(8) of the Basic Regulation that the dumping margins in respect of the polyolefin woven sacks imported on 18 May 1995 has been eliminated in comparison with the level of 85,7 % of anti-dumping duty set by Regulation (EEC) No 3308/90.

(10) In addition, the applicant argued that the product under consideration should not be classified within customs heading 6305 31 91 and, should therefore not be subject to the anti-dumping duties.

(11) The applicant further argued that the product under consideration, even if classified within customs heading 6305 31 91 does not constitute a like product and, should therefore not be subject to the anti-dumping duties.

(12) Finally, the applicant acknowledged in its application for a refund that it was submitted out of time. However, it claimed that the Commission should take into account the exceptional circumstances of the case, in particular the length of the appeal procedures before the national Customs authorities described at recitals (4) and (5) above and of making the submission to the Commission on the issue of the like product, to grant an extension of the time limit for the submission of the application and consider it admissible.

C. **ADMISSIBILITY**

1. **Like product and classification**

(13) The refund procedure is not intended to address the issues of like product or customs classification. Article 11(8) of the Basic Regulation stipulates that an importer may request reimbursement where it is shown that the dumping margin on the basis of which the duties were paid has been eliminated or reduced below the level of duty in force. This implies that the imports of the goods in question had been rightly determined to be covered by the measures in force. Therefore, the issues of like product and customs classification are irrelevant in the context of a refund procedure and have been dealt with in their appropriate frameworks as described in recitals (3) to (6).

2. **Time limit**

(14) Article 11(8) of the Basic Regulation states that in requesting a refund the importer shall submit an application within six months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities. This submission of an application in due time is an absolute requirement for the admissibility of a refund application, which is not subject to exceptions regardless of the circumstances.

Therefore, neither the appeal procedures before the national Customs authorities nor the submission before the Commission on the issue of like product could have had the effect of interrupting the six month time limit of Article 11(8).

(15) The amount of definitive duties to be levied is therefore considered to have been determined no later than 26 May 1995. The six month time limit therefore expired no later than 26 November 1995.

The application which was submitted on 25 July 1996 should therefore be considered as out of time and rejected as inadmissible,

HAS ADOPTED THIS DECISION:

Article 1

The application for the refund of anti-dumping duties submitted by Envopak Group Sales for the importation made on 18 May 1995 of woven polyolefin sacks originating in the People's Republic of China is hereby rejected.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland and to Envopak Group Limited.

Done at Brussels, 8 January 1998.

For the Commission

Leon BRITTAN

Vice-President