

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Legislation of the European Communities

Supplement

Reproduced herewith are the following documents:

- Council Regulation (EEC) No. 2336/86 clarifying the amount of anti-dumping duties to be collected upon imports from third countries into Portugal and Spain.
- Commission notice concerning the reimbursement of anti-dumping duties. This note is not of a legally binding nature but it serves the information of interested parties and guiding of internal procedures of the Commission.

COUNCIL REGULATION (EEC) No 2336/86

of 24 July 1986

concerning the existing anti-dumping duties applicable to imports from third countries into Spain and Portugal

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas pursuant to the Act of Accession and in particular to Article 2 thereof, Community anti-dumping measures in force on 31 December 1985 apply to imports from third countries into Spain and Portugal;

Whereas possible adjustments which might be required as a result of such extension of existing measures to imports into Spain and Portugal could be made pursuant to a review under Article 14 of Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾ carried out at the request of interested parties;

Whereas, since in certain cases this solution is excessively complicated, while in other cases it is inadequate, it has been considered appropriate to modify the application of the existing anti-dumping duties generally;

Whereas it appears appropriate to deal with any problems that may result from the extension of anti-dumping duties existing on 31 December 1985 to imports into Spain and Portugal by way of a rule that takes account in a global and general way of the continued application to imports from third countries during the transitional period of tariff duties not yet aligned on those of the Common Customs Tariff;

Whereas it is appropriate to ensure that the combined effects of the Community anti-dumping duty and the unaligned tariff shall not exceed the combined amount of the Common Customs Tariff and the anti-dumping;

Whereas the adoption of such a rule does not preclude the possibility for the Commission to hold a review under Article 14 of Regulation (EEC) No 2176/84,

HAS ADOPTED THIS REGULATION:

Article 1

Any anti-dumping duty imposed pursuant to Articles 11 and 12 of Regulation (EEC) No 2176/84 which was in force on 31 December 1985 shall be collected on imports into Spain or Portugal only to the extent that the amount of the customs duty in force in those Member States on the product in question plus the amount of the anti-dumping duty does not exceed the combined amount of the Common Customs Tariff duty and the anti-dumping duty on the same product.

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

This Regulation shall not apply to any anti-dumping duty referred to in Article 1, where the Regulation imposing it is subject to review pursuant to Article 14 of Regulation (EEC) No 2176/84 initiated before the entry into force of this Regulation.

At the request of an importer, and subject to satisfactory evidence being submitted to the competent authorities in Spain and Portugal, anti-dumping duties collected since 1 January 1986 on imports into Spain and Portugal shall be refunded to the extent that they exceed the sum payable in accordance with Article 1.

This Regulation shall apply until the customs duty in Spain and Portugal collected on the product, whose importation is subject to an anti-dumping duty, is at the same level as the Common Customs Tariff.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 24 July 1986.

For the Council

The President

A. CLARK

(1) OJ No L 201, 30. 7. 1984, p. 1.

Commission notice concerning the reimbursement of anti-dumping duties
(86/C 266/02)

On 15 October 1986 the Commission, after consulting the Member States, has laid down the following guidelines regarding the application of Article 16 of Council Regulation (EEC) No 2176/84 ⁽¹⁾ on the reimbursement of anti-dumping duties. These guidelines, which apply, *mutatis mutandis*, to Article 16 of Commission Decision No 2177/84/ECSC ⁽²⁾, are laid down for the purpose of informing interested parties and guiding the internal procedure of the Commission.

I. PROCEDURE

1. Standing of applicant

Any importer who has paid anti-dumping duties either directly or indirectly may apply for a reimbursement of those duties on condition that he has not been reimbursed by any other source.

2. Form of application

The application must be submitted in writing in one of the official languages of the Community and must be signed by a person empowered to represent the applicant. All information referred to under I.3 must be presented in such a way as to facilitate the necessary calculations; having regard, in particular and in so far as this is known to the applicant, to the system and methodology used in the investigation leading to the imposition of the anti-dumping duty in question.

3. Contents of application

The Commission intends to consider only those applications which demonstrate that the dumping margin has been reduced or eliminated and indicate the extent to which a reimbursement is considered justified.

They must provide the information necessary for the examination of the admissibility and merits of the application together with documentation and proof sufficient to allow verification. This information must relate to the following elements:

A. Duty collected

- (a) invoice(s) and other documents on which customs procedures were based;

- (b) customs documents showing, in particular, the basis for determining the amount of the duties to be levied (the type and quantity of the goods declared and the rate of anti-dumping duties applied) as well as the amount of the anti-dumping duty levied;
- (c) receipt or other proof of duty paid;
- (d) declaration that:
- the duty collected has not been reimbursed by the exporter or by any third party, and that no future reimbursement will be made or accepted,
 - the prices on which the application is based are genuine,
 - there is no compensatory arrangement made before, since or simultaneously with the sale(s) under consideration.

B. Actual dumping margin

(a) Normal value

Normal value for the exported products in question for the six months preceding the date of release for free circulation of these products, except for the case of point 4; where this information is not available to an applicant importer who is not associated with the exporter concerned, a statement that the information has been requested from the exporter.

(b) Export price

Except in the case of point 4, the following information on export prices:

(i) Sole importer

Where the importer concerned is the sole importer of the like products sold by the exporter to the Community and where during the six months preceding the date of release for free circulation of the shipment in question:

- export prices to him have not varied, information on the export price of the shipment in question,
- export prices to him have varied, information on export prices of all shipments from the exporter in question released for free circulation within the Community during that period;

⁽¹⁾ Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (OJ No L 201, 30. 7. 1984, p. 1).

⁽²⁾ Commission Decision No 2177/84/ECSC of 27 July 1984 on protection against dumped or subsidized imports from countries not members of the European Coal and Steel Community (OJ No L 201, 30. 7. 1984, p. 17).

(ii) Several importers

Where there are several importers of the like products sold by the exporter concerned to the Community and where during the six months preceding the date for free circulation of the shipment in question:

- export prices to all importers have been identical, information on the export price of the shipment in question,
- export prices have varied, but at any relevant time have been the same for all importers, information on export prices of all shipments from the exporter in question released for free circulation during that period to the importer concerned,
- export prices have varied in time and from importer to importer, information on export prices of all shipments from the exporter in question released for free circulation within the Community during that period; where this information is not available to an applicant importer who is not associated with the exporter concerned, a statement that the information has been requested from the other importers or from the exporter, as the case may be;

(iii) Associated importer

Where the importer is associated with the exporter, in addition to the export prices referred to under (i) or (ii) above, the corresponding information must be provided, *mutatis mutandis*, on resale prices to the first independent buyer within the Community.

Importer and exporter will be deemed to be associated, in particular, in cases where:

- one of them directly or indirectly controls the other,
- or
- both of them are directly or indirectly controlled by a third person,
- or
- together they directly or indirectly control a third person.

4. Recurring applications

- (a) Where applications for reimbursement of anti-dumping duties levied on three or more separate consignments of the like product within a period of six months or more are received or are likely to be received, the Commission may establish the actual dumping margin on the basis of data relating to the period in question (the 'reference period'). In such cases information on normal value, export prices, and, where the applications relate to an associated importer, on resale prices to the first independent buyer in the Community should be supplied, for the

reference period, only with the last of the applications relating to that period;

- (b) Where applications relate to two or more non-consecutive reference periods, information on normal values and export prices or, where applicable, resale prices to the first independent buyer may also be required for the intermediate periods;
- (c) The examination of the applications in question will be suspended until the data in respect of the whole reference period have been received. The result of such examination will be the basis for deciding all applications for reimbursement referring to consignments released for free circulation within the reference period.

5. Possibility of review

When examining any application for reimbursement, the Commission can decide at any time to initiate a review in accordance with Article 14 of Regulation (EEC) No 2176/84. The proceeding regarding the application for reimbursement will be suspended until the termination of the review.

6. Confidentiality

The rules of confidentiality as laid down in Article 8 of Regulation (EEC) No 2176/84 apply to all information received in connection with applications for refunds of anti-dumping duties.

7. Incomplete applications

Where an application does not contain all information necessary to decide upon its merits, the Commission will set a reasonable time limit for the receipt of the required information from the applicant or from the exporter or the other importers concerned, as the case may be. Failure to supply this information within the time limit may lead to the rejection of the application. Information received after the expiry of the time limit will only be accepted where the party supplying the information can show that the delay was caused by *force majeure*.

8. Addressee of application

The application must be addressed to the Commission of the European Communities⁽¹⁾ and be submitted via the competent authorities of the Member State in whose territory the products were released for free circulation. The Commission, upon request, will furnish the addresses of the competent national authorities.

⁽¹⁾ The Commission of the European Communities,
Directorate-General for External Relations,
DG I-C-1,
200 rue de la Loi,
B-1049 Brussels,
Belgium
(Telex: COMEU B 21877).

9. *Information of other parties*

The Commission may inform the parties directly concerned of any application for the reimbursement of anti-dumping duties and may afford them an opportunity to comment.

10. *Time limits*

All applications for reimbursement must be introduced within the time limits set out in Article 16 of Regulation (EEC) No 2176/84, even in cases where the Regulation imposing the duties in question is being challenged before the Court of Justice of the European Communities.

II. MERITS

The Commission intends to decide on the merits of an application in accordance with the following principles:

1. *Duty collected*

In determining the anti-dumping duty collected for the shipments in question, only those payments of duties for which sufficient proof has been provided will be taken into account. Payments of duties for which the applicant has been reimbursed by the exporter or a third party or has not provided the declaration referred to in I.3.A. (d) will not be taken into account.

2. *Actual dumping margin*

- (a) The actual dumping margin will be established by comparing
- the normal value referred to in I.3.B. (a),
 - and
 - the export price(s) derived from the information referred to in I.3.B. (b),
- in accordance with the relevant provisions of Article 2 of Regulation (EEC) No 2176/84;
- (b) Calculations will be based as far as possible on the same method applied during the original investigation, in particular with regard to any application of weighted averages or representative samples;
- (c) Where an export price is constructed pursuant to Article 2 (8) (b) of Regulation (EEC) No 2176/84, any payment of anti-dumping duties for the release for free circulation of the product concerned in the Community will be regarded as a cost incurred between importation and resale.

Consequently, any reimbursement, in total or in part, of anti-dumping duties paid on shipments imported by an importer which is associated with the exporter

concerned will only be granted under the following circumstances, all other factors remaining equal:

- where the products in question were resold to the first independent buyer on a duty unpaid basis, a reimbursement will be granted to the company which paid the duty, if the resale price has been increased by the amount of the dumping margin or a part thereof,
- where the products in question were resold to the first independent buyer on a duty paid basis, a reimbursement will be granted, if the resale price has been increased by an amount equivalent to the margin of dumping and the amount of the duty paid. In this case the applicant is not prevented from passing on to the buyer the amount eventually reimbursed.

If the costs incurred between importation and resale by an importer who is associated with an exporter have been reduced since the investigation period, the increase in the resale price necessary to justify a reimbursement would be less than envisaged above, by an amount corresponding to the cost reduction;

- (d) The excess amount to be reimbursed will normally be calculated as the difference between the duty collected and the actual dumping margin, expressed either as a percentage of the value used by the competent authorities for the determination of the anti-dumping duty or in absolute terms.

3. *Evidence*

- (a) The Commission will verify in detail all information necessary for deciding upon the admissibility and merits of the application in accordance with Article 7 (2) and (3) of Regulation (EEC) No 2176/84;
- (b) If the evidence provided by the applicant or by a third party on his behalf with regard to normal value and export prices cannot be verified to the extent deemed necessary by the Commission or is not sufficient to allow proper calculation of the actual dumping margin as set out above, that margin will be considered equal to the one established during the investigation which led to the imposition of the duty for which a reimbursement is claimed.

4. *Rejection of application and repeal of decision to reimburse*

- (a) Any application containing false declarations or information in respect of data upon which a decision has to be based will normally be rejected outright;
- (b) If it is found that information or evidence upon which a decision granting a reimbursement was based is incorrect, the decision will be revoked.