

REM NO

COMMISSION DECISION  
of 26.7.1993

finding that the repayment of import duties in a particular  
case is not justified

(request submitted by Luxembourg)

REM 5/93

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the  
repayment or remission of import or export duties,<sup>1</sup> as last amended by  
Regulation (EEC) No 3069/86,<sup>2</sup>

Having regard to Commission Regulation (EEC) No 3799/86 of 12 December 1986  
laying down provisions for the implementation of Articles 4a, 6a, 11a and 13  
of Council Regulation (EEC) No 1430/79 on the repayment or remission of  
import or export duties,<sup>3</sup> and in particular Article 8 thereof,

Whereas by letter dated 18 February 1993, received by the Commission on  
25 February 1993, Luxembourg asked the Commission to decide under Article 13  
of Regulation (EEC) No 1430/79 whether or not the repayment/remission of  
import duties is justified in the following circumstances:

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1 OJ No L 175, 12.7.1979, p.1.  
2 OJ No L 286, 9.10.1986, p.1.  
3 OJ No L 352, 13.12.1986, p.19.

During 1989 a Luxembourg firm imported vanadium oxides and hydroxides under the inward processing relief arrangements (drawback system).

Following processing of the import goods into ferro-vanadium, the compensating products were exported to Iraq via the port of Antwerp.

Disregarding the firm's instructions, the transport undertaking failed to report either to the customs agent appointed by the firm or to the supervising office responsible for inward processing arrangements.

The customs agent who carried out the formalities then draw up an EX1/T2 export declaration instead of the EX3T1 re-export declaration needed to discharge the inward processing arrangements.

This meant that the exported compensating products were not inspected and the incorporated import goods were therefore not identified.

Moreover the firm's employee in charge of the commercial department failed to notice the error. The firm is requesting repayment of the BF [REDACTED] import duty under Article 13 of Regulation (EEC) No 1430/79.

Whereas in accordance with Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 3 June within the framework of the Committee on Duty Free Arrangements to consider the case;

Whereas in accordance with Article 13(1) of Regulation (EEC) No 1430/79, import duties may be repaid or remitted in special situations other than those referred to in sections A to D of that Regulation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas the repeated errors on the part of various people professionally involved in the customs clearance operation, the carrier, the customs agent and the employee, do not constitute a special situation within the meaning of Article 13;

Whereas, moreover, mistakes made by such people, experienced in this type of customs clearance operation, must be regarded as obvious negligence;

Whereas, therefore, the repayment of import duties requested is not justified in this case,

**HAS ADOPTED THIS DECISION:**

Article 1

The repayment of import duties in the sum of BF [REDACTED] requested by Luxembourg on 18 February 1993 is hereby found not to be justified.

Article 2

This Decision is addressed to Luxembourg.

Done at Brussels, 26.7.1993

For the Commission