

COMMISSION DECISION

of 5 July 1990

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

(request submitted by the Netherlands)

REM: 1/90

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,¹ as last amended by Regulation (EEC) No 3069/86,²

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,³ and in particular Article 8 thereof,

Whereas by letter dated 12 January 1990, received by the Commission on 15 January 1990, the Netherlands requested the Commission to decide, pursuant to Article 13 of Regulation (EEC) No 1430/79, whether the repayment of import duties is justified in the following circumstances:

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, 12.12.1986, p.19.

During the period from 29 October to 10 November 1984 a team of investigators from the Commission of the European Communities carried out an investigation in Jamaica into the export of natural honey to the European Community under cover of EUR 1 certificates. The main finding of the report on the investigation is that from 1979 to 1984 a large number of EUR 1 certificates were issued in error.

Following the investigation, the competent Jamaican authorities informed the Commission by letter dated 5 December 1984 that all the certificates covered by the investigation had been withdrawn.

On the basis of the abovementioned information, the Inspector of Customs and Excise in Rotterdam was requested, by letter No 285-2020 of 14 March 1985, to take action for the post clearance recovery of the amounts outstanding.

On 25 October 1985 a claim for the recovery of the outstanding duties (totalling HFL [REDACTED]) was sent to the declarant concerned.

By letter dated 28 October 1985, the declarant (a customs agent) requested the abovementioned Inspector to repay the amounts recovered post-clearance, pursuant to Article 13 (1) of Regulation (EEC) No 1430/79, in the version then applicable.

After consulting the Ministry of Finance, the Inspector refused that request on the ground that no special circumstances obtained in the case in point. The declarant appealed to the "Tariiefcommissie", an administrative court of first and last instance. In its ruling of 20 November 1989, that body held that the request for repayment in question should be submitted to the Commission.

Whereas, in accordance with the requirements of Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 30 April 1990 within the framework of the Committee on Duty Free Arrangements to consider the case in question;

Whereas, in accordance with Article 13(2) of Regulation (EEC) No 1430/79, import duties may be repaid or remitted in special situations other than those laid down in Sections A to D of the said Regulation resulting from circumstances which do not imply any deception or obvious negligence on the part of the person concerned;

Whereas no special situation is to be found in the case in point;

Whereas the declarant is a customs agent who completed the formalities for release of the goods for free circulation on behalf of another person, but in his own name, placing himself under the obligation to pay any import duties to which the goods declared might be subject;

Whereas he accordingly accepted liability not only for payment of the import duties but also for the correctness of the documents which he produced to the customs authorities in support of the declaration for release for free circulation;

Whereas the receipt of invalid certificates or of documents subsequently invalidated by the competent authorities cannot be held to be a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 capable of constituting grounds for repayment of import duties that are lawfully due, since the bona fide validity of such certificates and the veracity of their contents are not, as a general principle, protected, in accordance with the judgement of the Court in Cases 98 and 230/83;

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

HAS ADOPTED THIS DECISION:

Article 1

The repayment of the import duties amounting to HFL [REDACTED] requested by the Netherlands on 12 January 1990 is hereby found not to be justified.

Article 2

This Decision is addressed to the Netherlands

Done at Brussels, 8/7/90 For the Commission.