

REM/NON

Commission Decision
of 22.9.1991
finding that the remission of import duties
in a particular case is not justified

(request submitted by Italy)

REM : 10/91

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 9 October 1991, received by the Commission on 23 October 1991, Italy requested the Commission to decide, pursuant to Article 13 of Regulation (EEC) No 1430/79, whether the remission 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, 13.12.1986, p. 19.

An Italian undertaking which had been authorized on 20 February 1990 to carry out inward processing operations (export-import) in respect of a total of 100 tonnes of long-grain rice carried out ten prior exportation operations from 22 February 1990 to 21 May 1990 in respect of a total of 87 tonnes of wholly milled rice (CN code 1006 30 99) and at the same time bought from Thailand a corresponding quantity of husked rice falling within CN code 1006 20 90 which was to be imported to offset the prior exports;

Because of the congestion in the port of Bangkok, the rice purchased in Thailand had not been loaded on the vessel initially scheduled, which was due to dock at Genoa on 18 May 1990, but on another vessel which reached its destination much later, namely 3 June 1990;

The imported rice was released for free circulation in a single operation involving 107.5 tonnes on 27 June 1990;

Consequently, for the bulk of the rice exported, namely 64 tonnes, the processing operation was not completed within the three months laid down by Council Regulation (EEC) No 3677/86 laying down provisions for the implementation of Regulation (EEC) No 1999/85 on inward processing relief arrangements;¹

The importer is requesting remission of the charge which he has to pay as a result of failure to honour his commitments, i.e. the sum of Lit [REDACTED], by invoking the unforeseen nature of the change of vessel, which was not brought to his attention until after the event;

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 31 January 1992 within the framework of the Committee on Duty Free Arrangements to consider the case;

1 OJ No L 351, 12.12.1986, p.1.

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 party concerned;

Whereas, in accordance with the first indent of Article 29(2) of Regulation (EEC) No 3677/86, the inward processing operation (export-import) must be carried out within three months at the most from the date of acceptance of the export declaration for the compensating products, where the goods to be imported are subject to a price-regulating mechanism, as in this case; whereas, under Article 29(1), this time limit is set with due regard to the time needed for the supply and transport of the import goods to the Community;

Whereas prior exportation constitutes a derogation and whereas the three-month period cannot therefore be extended;

Whereas in this particular case the party concerned failed to complete the inward processing operation in respect of 64 tonnes of exported rice by the time limit set and whereas for 56 tonnes of these 64 tonnes the time limit was exceeded by as much as 30 to 36 days;

Whereas the time limit had already been exceeded when the vessel transporting goods from a non-Community country to the Community arrived;

Whereas the importer should have taken all the necessary steps to ensure that the goods from non-Community countries could be purchased and transported within the time limit set; whereas in calculating the time needed the importer should have allowed a margin to cover the possibility of any practical difficulty such as a delay in loading;

Whereas the circumstances in which the inward processing operations (export-import) were completed late cannot therefore be regarded as constituting a special situation;

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

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties of LIT [REDACTED] which is the subject of the request submitted by Italy on 9 October 1991 is not justified.

Article 2

This Decision is addressed to Italy.

Done at Brussels, 22.4.1992

For the Commission