

# COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16 September 1991

C (91) 1903 final

NOT FOR PUBLICATION

## COMMISSION DECISION

OF 16 September 1991

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

(request submitted by the United Kingdom)

REM 4/91

COMMISSION DECISION

of

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

(request submitted by the United Kingdom)

REM 4/91

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,<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 April 1991, received by the Commission the same day, the United Kingdom 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, 9.10.198, p.1.

3 OJ No L 352, 13.12.1986, p. 19.

Under Commission Regulation (EEC) No 999/90 of 20 April 1990,<sup>4</sup> which replaces Commission Regulation (EEC) No 551/85,<sup>5</sup> imports of rice from the African, Caribbean and Pacific States into the Community qualify for a reduced rate of levy on condition that they are accompanied by a EUR1 movement certificate and an Advance Fixing Certificate (AFC);

Staff of local customs offices were notified through information memos from the national authorities of the conditions for application of the reduced levy. In this case the information concerning the requirement to present an AFC for ACP rice, correcting an earlier omission, was not disseminated until 26 November 1990. The mistake is attributable to misunderstandings and poor communications between both the trader and the customs authorities and between different customs offices.

In July and September 1989 a trader imported rice originating in ACP States, which he placed in a customs warehouse. He subsequently released the goods for free circulation by paying the full duty in the assumption that part would be refunded on presentation of duly-completed EUR1 certificates. The certificates were presented to customs in October 1990. Customs sent them to the relevant department for verification, an operation which was completed before the local customs office in question was notified that an AFC was also required. The trader at the same time received a letter from the local customs office mistakenly informing him that he would receive a refund based on the reduced rate of levy. Although the refund procedure was stopped at the last minute, the trader had already taken financial measures in anticipation of the expected refund.

---

4 OJ L 101, 21.4.1990, p. 20.

5 OJ L 63, 2.3. 1985, p. 10.

The trader had recently bought a firm importing rice from outside the Community. He came to the business without experience of the procedures laid down for the importation of third-country goods. The papers of his predecessor did not mention the need to present an AFC in order to qualify for a reduced levy on ACP rice and customs did not inform him of this requirement either. The Member State submitting this case to the Commission points out that the trader, finding himself in difficulties, attempted to resolve his problems by applying for a loan on the strength of customs' mistaken opinion that he would receive a refund of import duties totalling GBP [REDACTED] based on the reduced rate of levy.

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 24 June 1991 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 laid down 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 Commission Regulation No 999/90 laying down detailed implementing rules for imports of rice originating in the African, Caribbean and Pacific (ACP) States, and the overseas countries and territories (OCT) provides for a cooperation procedure with these States so that a reduced levy is imposed on import into the Community of rice originating in the said States, countries or territories, on condition that the specific levy to be applied is fixed in advance; whereas this enables the exporting country concerned to calculate precisely the amount to be levied on the export of the rice by way of an export tax;

Whereas this procedure has been in force since 1 March 1985, the date on which Regulation (EEC) No 551/85 came into force; whereas this Regulation was replaced by Regulation (EEC) No 999/90 with effect from 1 March 1990;

Whereas customs mistakenly gave imprecise and erroneous information regarding the conditions and formalities which must be fulfilled in order to qualify for a reduced rate of duty under Regulation (EEC) No 999/90, particularly with regard to the obligation to present an AFC certificate;

Whereas, however, this error on the part of customs could reasonably be detected by the importer, since it is the responsibility of any trader to find out about the Community legislation applicable before importing goods from non-member countries; whereas this is all the more necessary in cases where the trader intends to claim a reduced levy because of the origin of the goods to be imported; whereas in these circumstances it is up to all traders to acquaint themselves with the specific procedure, the procedure in question having been published on a number of occasions in the Official Journal of the European Communities and in force for over five years;

Whereas, in the light of the fact that the error of customs could have been detected by the importer and that, in an analogous situation, the non-recovery, post clearance, of import duties could not be authorized on the basis of Council Regulation (EEC) No 1697/79 of 24 July 1979,<sup>6</sup> evidence other than this error must be presented in order to obtain recognition of special circumstances within the meaning of Article 13 of Regulation (EEC) No 1430/79 and so justify repayment of the import duties in question;

---

6 OJ No L 197, 3.8.1979, p.1.

Whereas the firm's only additional argument was its precarious financial situation; whereas Community rules on post-clearance recovery do not provide for consideration of an importer's precarious finances; whereas, in addition, according to the workings of the preferential arrangements in question, the firm would have had to pay a purchase price for the imported goods that included the export tax; whereas, pursuant to the aims of the system, a financial benefit should have gone to the exporting State and not the importing firm;

Whereas, therefore, there is in this case no special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 and it is not therefore justified to grant the repayment of the import duties requested,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties of GBP [REDACTED] which is the subject of the request submitted by the United Kingdom on 18 April 1991 is not justified.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 16 September 1991

For the Commission  
Ch. SCRIVENER  
Member of the Commission

