

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01. III. 1993

C(93) 465 final

NOT FOR PUBLICATION

Commission Decision

of 01. III. 1993

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

(request submitted by Ireland)

REM 12/92

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Communities,

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 duties,³ and in particular Article 8 thereof,

Whereas by letter dated 25 August 1992, received by the Commission on 1 September 1992, Ireland 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, 13.12.1986, P. 19.

In early 1989, following the takeover of the parent company of a US pharmaceutical manufacturer, a sterile pharmaceutical production unit was entirely transferred from New Jersey, USA, to an existing but relatively new production facility in Ireland by its new parent company. This involved the transfer of all the plant and machinery and the stocks of raw materials on hands to the Irish manufacturing plant. The Irish facility had been operating since mid-1987.

The transferred raw materials were to be used for manufacture of a different range of products to those already produced in that facility in Ireland, for export from the Community. These transferred raw materials would, when exhausted, be replaced by supplies sourced as far as possible in the Member States. Any raw materials which could not be obtained within the Community would be imported.

On 19 June 1989, the company applied for an inward processing authorization which was duly issued on 7 September 1989 and was valid for the period 19 June 1989 to 18 June 1990.

However, prior to the granting of that authorization the raw materials from the New Jersey plant had been imported along with the production machinery and customs duties had been paid on these at importation.

The company applied for a refund of this duty. The duty on the machinery was subsequently refunded in June 1990 under provisions of Regulation (EEC) N° 918/83 of 23 April 1983 concerning the Transfer of activities⁽⁴⁾. However, duty on raw materials imported prior to 19 June 1989, the date on which the inward processing authorization took effect, was not refunded.

(4) OJ N° L 105, 23.4.83, p. 1.

The company claims a refund of the duty paid on these materials in accordance with Article 13 of Regulation (EEC) No 1430/79 on the grounds that it was paid in error. Had they been aware of the existence of the inward processing facility they would have applied earlier to use it.

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 8 January 1993 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, the 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 persons concerned;

Whereas a firm undertaking such a major operation as a wholesale transfer of production might have been expected to find out about all the applicable regulations in advance;

Whereas Council Regulation (EEC) No 3677/86 of 24 November 1986 stipulates that entitlement to inward processing relief is subject to an authorization which may be granted upon request by the competent authorities and should as a rule be obtained before the goods are actually processed; however, where the circumstances so warrant, the authorization may be issued after processing has begun, with effect from the date on which the application was accepted;

Whereas the Irish authorities have already granted an inward processing authorization valid from the date on which the application was lodged;

Whereas the failure to lodge an inward processing application in this time cannot be considered a special situation; whereas the applicant firm has shown obvious negligence;

Whereas the conditions for application of Article 13 of Regulation (EEC) No 1430/79 are not fulfilled;

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 import duties of IRL [REDACTED] requested by Ireland on 25 August 1992 is hereby found not to be justified.

Article 2

This Decision is addressed to Ireland.

Done at Brussels, 01. III. 1993

For the Commission

Ch. SCRIVENER

