

COMMISSION DECISION  
of 19.10.1993

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

(request submitted by the Netherlands)

**REM 13/93**

---

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 16 April 1993, received by the Commission on 26  
April 1993, the Netherlands asked the Commission to decide under Article 13  
of Regulation (EEC) No 1430/79 whether or not 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.

On 17 July 1990 a consignment of 94 boxes of herbal pills from Taiwan were entered for the customs warehouse procedure in Rotterdam.

On 7 May 1991 an import declaration was made for the goods. On the basis of this, the authorities levied import duties of HFL [REDACTED] and agricultural levies of HFL [REDACTED]

Permission to remove the goods was given on 10 May but on 22 May, the day they were due to be collected, the goods were found to be missing from the warehouse. The storage company reported the theft to the police on 28 May 1991.

On 28 April 1992 the declarant applied for repayment on the grounds that he should not have paid import duties. He argued that it was not his fault that the goods could not be delivered to the consignee because they had been stolen.

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 September 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, 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 theft was detected only when the goods were to be collected, and whereas a customs debt is incurred when the declaration in question is accepted and the declarant is liable for the debt; whereas the declarant was obviously negligent in omitting to check whether the goods were in fact there when he declared the goods for release;

Whereas, furthermore the goods had therefore theoretically been put onto the Community market;

Whereas theft does not in itself constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79;

Whereas the conditions of Article 13 of Regulation (EEC) No 1430/79 have not been fulfilled;

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 totalling HFL [REDACTED] requested by the Netherlands on 16 April 1993 is hereby found not to be justified.

Article 2

This Decision is addressed to the Netherlands.

Done at Brussels, 19.10.1993

For the Commission