

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2 October 1991

C (91) 2092

NOT FOR PUBLICATION

COMMISSION DECISION

of 2 October 1991

finding that the repayment of import duties
in a particular case is not justified
(request submitted by the United Kingdom)

REM 3/91

Commission Decision
of 2.10.1991
finding that the repayment of import duties
in a particular case is not justified

(request submitted by the United Kingdom)
REM 3/91

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 customs duties,³ and in particular Article 8 thereof,

Whereas by letter dated 25 March 1991, received by the Commission on 2 April 1991, 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, 9.10.1986, p. 1.
3 OJ No L 352, 13.12.1986, p. 19.

A British firm concluded a contract with a US firm for the supply of clutches to a French company. The clutches (tariff heading 87.08) are imported from the United States, fitted in gearboxes by the British firm, and sent to the French company, which ultimately exports them from the Community.

The British firm, having enquired about the possibility of using the inward processing procedure, was informed on 12 April 1988 by the local customs administration that to administer the proposed commercial operation correctly the French company would also have to apply to the appropriate French authorities for authorization to use the procedure.

The French company was approached by the UK firm, but declined to participate in the inward processing procedure. The UK firm therefore entered the clutches for free circulation and paid duty of UKL [REDACTED] on 28 consignments.

Following discussions with the American supplier, the French company has now agreed to use the inward processing procedure in future.

On 17 November 1989 the British firm applied to its local customs administration to convert the declarations on the 28 consignments of clutches into inward processing declarations. Amendment of the declarations and admission of the goods under the procedure would entail reimbursement of the UKL [REDACTED] ([REDACTED]).

The UK authorities were unable to grant the application since the goods had already been exported and the firm had not proceeded with its original plan of importing the clutches under the inward processing arrangements.

The requesting Member State notes that the UK firm would have qualified to use the inward processing procedure provided the French company had been willing to apply it.

The British firm supplied documentation proving that the clutches were sent to the French company, which acknowledged receipt by letter and declared that they had been re-exported from the Community. No commercial document has been produced certifying that the goods have been exported from the European Communities.

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 in question;

Whereas, in accordance with Article 13(1) of Regulation (EEC) No 1430/79, the repayment or remission of import duties may be authorized 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 negligence or deception on the part of the person concerned;

Whereas the release for free circulation of the clutches imported from the United States was essentially due to poor coordination between the US, British and French firms; whereas a more thorough study of customs procedures should have formed part of the groundwork for this operation, but having applied for release for free circulation, the firm was apparently in a hurry to get on with the processing operation right away;

Whereas a properly conducted inward processing operation normally implies re-exportation of the worked products; whereas such an operation cannot be considered to have taken place unless it can be shown that the products in question have actually left the customs territory of the Community; whereas the rules laid down for comparable situations in Article 3(1)(a) of Commission Regulation (EEC) No 3799/86 (OJ No L 352, 13.12.1986) show that the requirements for proof of actual export are fairly demanding; whereas a simple statement by the French firm that it has exported the goods is thus not sufficient;

Whereas in this case there is accordingly no special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79, and even if there were it would not be possible to rule out obvious negligence; whereas there are therefore no grounds for granting repayment of import duties,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties of ECU [REDACTED] requested by the United Kingdom on 25 March 1991 is hereby found not to be justified.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 2 October 1991

For the Commission

Ch. SCRIVENER

Member of the Commission

