

COMMISSION DECISION

of ... 6.1.1984

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

(request submitted by the Netherlands)

REM 22/93

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code,¹

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, and in particular Article 907 thereof,²

Whereas by letter dated 3 December 1993, received by the Commission on 8 December 1993, the Netherlands asked the Commission to decide, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,³ as last amended by Regulation (EEC) No 3069/86,⁴ whether the repayment of import duties is justified in the following circumstances:

1 OJ No L 302, 19.10.1992, p.1.

2 OJ No L 253, 11.10.1993, p.1.

3 OJ No L 175, 12.7.1979, p.1.

4 OJ No L 286, 9.10.1986, p.1.

A Dutch vehicle importer began bringing in cars from Taiwan in the second half of 1991. The Rotterdam customs district issued a type E warehousing authorization in connection with that trade at the time.

Stockpiling of cars at the warehouse began in 1992, but vehicles were declared for importation in a piecemeal manner. Eventually, in April 1992, all the cars still covered by the warehousing procedure were released for home use. The reason for this was the availability up to and including April 1992 of an 850-guilder reduction in the special consumer tax (Bijzondere Verbruiksbelasting or BVB) per car. No reduction in the BVB was possible thereafter.

In January 1993, the Taiwanese car maker decided to halt exports to Europe because of disappointing sales and increasingly stringent European certification and environmental standards. At that point, approximately 135 of the 500 cars exported to Europe had been sold in the Netherlands. The maker decided to export all the unsold cars to countries outside Europe and to try to buy back from the owners those that had been sold, with the intention of exporting those vehicles to countries outside Europe as well. This was to avoid having to keep up after-sales service arrangements to discharge the obligations of the guarantee and having to provide parts for a minimum of ten years.

The Dutch importer applied for a repayment of the NLG [REDACTED] of import duty paid on the new and unused cars it still had. The cars in question were exported to Nigeria and Russia during the first half of 1993, while the application was being considered.

Whereas in accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 4 February 1994 within the framework of the Customs Code Committee 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 the importer entered the vehicles in question for free circulation purely for commercial reasons rather than as the result of any obligation;

Whereas Regulation (EEC) No 1430/79 is based on the assumption that importers will usually be in a position to enter an item for free circulation with full knowledge of the facts, whereas the entry for free circulation must therefore be considered irreversible, and whereas the Regulation provides for exceptions from this principle only in special cases;

Whereas the Taiwanese manufacturer's decision to stop exporting cars to Europe was made for commercial reasons;

Whereas under Article 4(2)(a) of Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Regulation (EEC) No 1430/79,⁵ re-exportation from the Community customs territory of goods already entered for a procedure involving the collection of import duties, on the grounds of failure to sell, is not a special situation;

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

⁵ OJ L 352, 13.12.1986, p.19.

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of NLG [REDACTED] requested by the Netherlands on 3 December 1993 is hereby found not to be justified.

Article 2

This Decision is addressed to the Netherlands.

Done at Brussels, 6.5.1994

For the Commission