

REM/YES

Commission Decision
of 6.3.1991
finding that the repayment of import duties in a
particular case is justified

(request submitted by the Netherlands)

REM 7/91

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
import or export duties,³ and in particular Article 8 thereof,

Whereas by letter dated 2 September 1991, received by the Commission on
13 September 1991, the Netherlands 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.

Between January and April 1990 a Dutch firm imported cupboards from the former GDR at an import duty of 5.6%, to a total of HFL [REDACTED].

The cupboards were faulty but this was not discovered until later, when they were assembled following resale by the importing firm. Since the firm used the LIFO (last in-first out) stock management system, the defective goods from stock were not delivered for some time.

Since the defect was the result of a manufacturing fault, the supplier agreed to take back the furniture, which was returned on 15 and 16 October 1990, after German unification. This meant that the requirement in Article 6 of Regulation (EEC) 1430/79 for defective goods to be re-exported from the customs territory of the Community would no longer be fulfilled.

The forwarding agent who paid the duties on behalf of the importing firm applied for repayment claiming a special situation arising from the political circumstances;

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 31 January 1992 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 the defective nature of the goods was proved to the satisfaction of the competent national authorities and the goods were actually returned to the original supplier;

Whereas the failure to comply with the requirement of re-exportation from the customs territory of the Community as laid down in Article 6 of Regulation (EEC) No 1430/79 is purely formal and entirely due to changing political circumstances;

Whereas those circumstances gave rise to a special situation the consequences of which should not be borne by the importer of the forwarding agent;

Whereas in these circumstances no deception or obvious negligence may be attributed to the importer or the forwarding agent;

Whereas it is therefore justified in this case to approve repayment of the import duties requested,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties of HFL ██████████ requested by the Netherlands on 2 September 1991 is hereby found to be justified.

Article 2

This Decision is addressed to the Netherlands.

Done at Brussels, 6. 3. 1992

For the Commission