

COMMISSION DECISION

of 19.7.93<sup>3</sup>

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

(request submitted by the Netherlands)

REM 9/93

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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 3 March 1993, received by the Commission on 10 March 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:

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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 24 November 1986 and 22 July 1987, external Community transit documents (T1), with Italy as the country of destination, were issued in Rotterdam for the transport of frozen beef from Argentina, Brazil, Uruguay, Paraguay and Romania.

An enquiry by the Tax Information and Investigation Service (FIOD) revealed that the goods had never reached Italy, but had instead been released for free circulation in the Netherlands. The transit documents had been posted to Italy and completed with false information.

The diversion of the goods from their destination meant that the transit documents could not be discharged, with the result that a notification of non-discharge was sent to the party concerned on 22 December 1987. This was followed on 26 February 1988 by a claim, on the grounds of the non-discharge of the transit documents, for a total of NLG [REDACTED], comprising NLG [REDACTED] in import duties, NLG [REDACTED] in agricultural levies and NLG [REDACTED] in monetary compensatory amounts.

The party concerned appealed against this claim for payment. Following the dismissal of this appeal, the party lodged a request for repayment of duties based on Article 13 of Regulation (EEC) No 1430/79, arguing that it had been unaware of the fraud and had always acted in good faith.

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 July 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 party concerned, by placing goods under the external Community transit procedure, is, as the principal, bound by Article 11(1)(c) of Regulation (EEC) No 2726/90<sup>4</sup> to pay duties and any other charges due as a result of the non-discharge of a Community transit operation;

Whereas the fact that the party concerned was unaware of the fraud and had acted in good faith cannot be considered a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79;

Whereas, moreover, acknowledging the existence of a special situation in such circumstances would undermine the very objectives of the provisions governing repayment or remission by encouraging the activities of unscrupulous importers who might be tempted to exploit the good faith of intermediaries and carry out unlawful acts;

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 in the sum of NLG [REDACTED] requested by the Netherlands on 3 March 1993 is hereby found not to be justified.

Article 2

This Decision is addressed to the Netherlands.

Done at Brussels, 10.9.1993

For the Commission

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4 OJ No L 262, 26.9.1990.