

COMMISSION DECISION

of 23 July 1991

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

(request submitted by France)

REM: 1/91

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,<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 22 January 1991, received by the Commission on 24 January 1991, France 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, 9.10.198, p.1.  
3 OJ No L 352, 13.12.1986, p. 19.

From 25 March to 2 October 1989, a French firm imported from Taiwan cast-iron housings for ball or roller bearings, together with the necessary joints.

The firm had the imports released for free circulation duty-free on presentation of a Form A origin certificate issued in Taiwan, in the context of the generalized preferences granted by the EEC to various developing countries.

In December 1989 a post-clearance check by customs revealed that the firm had made a false declaration. Since Taiwan is excluded from the system of preferences opened by the EEC for developing countries, the applicant firm was not entitled to bring the imports in duty-free.

The firm was notified of the post-clearance recovery of the unpaid duties on 25 April 1990. The duties, totalling ECU [REDACTED], were paid on 16 May 1990.

On 24 July 1990 the firm applied to the customs office of import for repayment under Article 13(1) of Council Regulation (EEC) No 1430/79 (special cases).

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;

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 application for repayment relates to circumstances covered mainly by Article 4(2)(c) of Regulation (EEC) No 3799/86, whereby the production, even in good faith, for the purpose of securing preferential tariff treatment of goods entered for free circulation, of documents subsequently found to be forged, falsified or not valid for the purpose of securing such preferential tariff treatment shall not by itself be a special situation within the meaning of Article 13(1) of Regulation (EEC) No 1430/79;

Whereas the circumstances giving rise to the post-clearance recovery in question are largely typical of the improper implementation of customs legislation;

Whereas in the event of an application for repayment on such grounds being lodged with the competent authorities of a Member State, these authorities shall, pursuant to Article 5(2) of Regulation (EEC) No 3799/86, decide for themselves not to repay the amount of import duties concerned;

Whereas the application for repayment of import duties totalling ECU [REDACTED] is not admissible and cannot be taken into consideration in terms of Article 13 of Regulation (EEC) No 1430/79,

HAS ADOPTED THIS DECISION:

Article 1

The request for repayment of import duties of ECU [REDACTED] which is the subject of the request submitted by France on 22 January 1991 is refused as inadmissible.

Article 2

This Decision is addressed to France.

Done at Brussels, 23 July 1991

For the Commission