

COMMISSION DECISION

of 13 July 1990

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

(request submitted by Italy on 3 February 1990)

REM : 3/90

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 February 1990, received by the Commission on 19 February 1990, Italy 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:

<sup>1</sup> OJ No L 175, 12.7.1979, p. 1.  
<sup>2</sup> OJ No L 286, 9.10.1986, p. 1.  
<sup>3</sup> OJ No L 352, 13.12.1986, p. 19.

On 6 February 1985, an Italian firm imported through the Marghera customs (Province of Venezia) a consignment of 7 656 155 kilos of fuel oil under CCT subheading No 27.10.591; the consignment, of Romanian origin, was shipped from Malta.

When the goods were released for free circulation, preferential treatment under the system of generalized preferences was requested and granted, on presentation of a certificate of origin Form A issued by the Chamber of Commerce of Bucharest and a certificate of non-handling issued by the Maltese Customs.

The Italian Government later issued customs offices with instructions for the correct application of the notion of "direct transport" referred to in Article 6 of Regulation (EEC) No 3749/83 on the definition of the concept of originating products for purposes of the application of tariff preferences granted in respect of certain products from developing countries, specifying that products re-invoiced in the country of transit were not eligible for the system.

Venezia Customs therefore collected customs duties on the consignment on 23 September 1985; those duties amounted to LIT [REDACTED]

In the meantime, following a question on a similar case from the Italian Government to the Commission, the Committee on Origin specified, at its 158th meeting, that, on the basis of the judgment by the Court of Justice of 7 May 1986 in Case 155/85, re-invoicing does not in itself constitute an entry into commerce; consequently, preferential treatment was not affected by re-invoicing, since the definition of direct transport had, in the case in point, been respected.

This ruling was notified to the Italian Government by telex on 12 November 1986, and sent on to the customs offices in a circular of 29 December 1986.

The matter should therefore have been settled with the repayment of the customs duties on the basis of Article 2(1) of Regulation (EEC) No 1430/79, under the procedure and within the three-year period specified in Article 2(2).

On 2 March 1989 the firm submitted an application for repayment under Article 13 of the Regulation, stating that it had realized the mistake only after periodic auditing of its accounts.

Whereas, in accordance with the requirements of Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 30 April 1990 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 reimbursement 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 obvious negligence or deception on the part of the person concerned;

Whereas there is no such special situation in this case;

Whereas Article 2 of Regulation (EEC) No 1430/79 provides that where there is no customs debt, or where the amount is fixed at a level higher than that lawfully due, import duties shall be repaid upon submission of an application or at the initiative of the authorities within a period of three years from the date those duties were entered in the accounts; whereas this period may be extended only if unforeseeable circumstances or force majeure prevented the submission of the application for repayment within the period specified;

Whereas the failure of the competent authorities to themselves establish circumstances justifying the repayment of import duties under Article 2 of Regulation (EEC) No 1430/79 quite clearly may not be perceived as an unforeseeable circumstance or force majeure since the plaintiff could have acted himself;

Whereas the periods of limitation were designed to cover both the repayment of import duties and the post-clearance recovery of those duties in order to permit a date to be fixed on which the files concerning those matters may be definitively closed;

Whereas the application for repayment was submitted after the expiry of the abovementioned period of limitation; whereas Article 13 of the abovementioned Regulation may not be used to permit the extension, in circumstances other than those mentioned in the second indent of Article 2(2) of Regulation (EEC) No 1430/79, of the period of limitation strictly defined by Community law;

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

HAS ADOPTED THIS DECISION:

Article 1

The repayment of the import duties of LIT [REDACTED] requested by Italy on 3 February 1990 is hereby found not to be justified.

Article 2

This Decision is addressed to Italy.

Done at Brussels, 13/7/90

For the Commission