

COMMISSION DECISION

of 30-01-1997

finding that the repayment of import duties in a particular
case is not justified
(request submitted by Belgium)

REM 11/96

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 2913/92,² and in particular Article 907 thereof,

Whereas by letter dated 31 July 1996, received by the Commission on 9 August 1996, Belgium 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, 12.07.1979, p.1.

⁴ OJ No L 286, 09.10.1986, p.1.

A Belgian firm imports, cuts and packages adhesive tape from the United States. The products were declared to customs under CN codes 4811 2100 or 4813 1190 and a 9% ad valorem duty paid.

Duties on goods of CN code 4811 2100 were suspended as of 1 July 1990. Unaware of this fact, the firm failed to avail itself of the suspension. Following a physical inspection of the goods on 15 October 1992, customs confirmed that the adhesive tape in question could be imported free of duties under CN code 4811 2100. The products have since been declared under that code and benefited from the suspension.

The firm has therefore requested repayment of XXXX paid in import duties from 5 July 1990 to 30 September 1992, the period between the entry into force of the suspension and the customs inspection.

The national administration concerned has, however, refused repayment on the grounds that it was not possible to establish whether the adhesive tape imported before the inspection of 15 October 1992 was the same as that inspected and therefore eligible for the suspension.

Arguing that identical goods purchased from the same supplier had been imported into the Netherlands free of duty since 1990 and presenting statements from two customers and the American supplier confirming that the nature and composition of the goods had not changed since 1990, the firm requested repayment of the duties in question under Article 13 of Regulation (EEC) No 1430/79.

Whereas the firm concerned declares that it has taken note of the dossier sent to the Commission by the Belgian authorities and has nothing to add;

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 11 November 1996 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) 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 under the provisions governing the repayment of undue duties, the competent Belgian authorities dismissed the request for repayment on the grounds that it was not possible to establish retrospectively whether the adhesive tape imported before 15 October 1992 was the same as that imported after that date and therefore eligible for the suspension of import duties; whereas the duties in the sum of XXXX are therefore due;

Whereas the evidence cited by the firm, namely the fact that identical goods had been imported duty-free into the Netherlands since 1990 and the statements by the supplier and two customers that the nature and composition of the products had not changed since 1990, has not been adjudged by the competent Belgian authorities to warrant repayment under the provisions governing duties not legally due;

Whereas these circumstances cannot be considered to constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79;

Whereas the Community provisions suspending import duties on products of CN code 4811 2100, the code under which the firm declared part of its imports, have, moreover, been published in the *Official Journal of the European Communities*; whereas the firm has therefore failed to exercise due care;

Whereas the circumstances in this case cannot be held, within the meaning of Article 13 of Regulation (EEC) No 1430/79, to constitute a special situation in which no deception or obvious negligence may be attributed to the person concerned;

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 XXXXX requested by Belgium on 31 July 1996 is hereby found not to be justified.

Article 2

This Decision is addressed to Belgium.

Done at Brussels, 30-01-1997

For the Commission