

REMB/OUI

COMMISSION DECISION

of 10.9.1992

finding that the request for repayment of import duties in a particular case is inadmissible

(request submitted by Italy)

REM 3/92

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 24 February 1992, received by the Commission on 12 March 1992, 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:

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 14 July 1988 and 4 July 1989 an Italian firm imported several consignments of integrated circuits (memory units) falling within CN code ex 8542 11 71.

In making the corresponding import declarations the company concerned omitted to claim the application of Regulations (EEC) Nos 1799/88,<sup>4</sup> 3696/88<sup>5</sup> and 1656/89,<sup>6</sup> all of which temporarily suspended autonomous CCT duties, and accordingly paid duty at a rate of 14%.

On 23 August 1989 the firm applied for repayment of the duty paid. Italian customs, however, rejected the application on the grounds that all the import consignments had been declared on the basis that duty would be paid, despite the existence of a suspension.

The firm appealed on 4 July 1991 under Regulation (EEC) No 1430/79 for the repayment of LIT [REDACTED], being the duty paid in respect of only some of the goods, namely, memory units bearing the identification marking HM 62256.

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 June 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;

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4 OJ L 164, 30.6.1988.  
5 OJ L 329, 1.12.1988.  
6 OJ L 167, 16.6.1989.

Whereas the goods in question are covered by Regulations (EEC) Nos 1779/88, 3696/88 and 1656/89, which temporarily suspended autonomous CCT duties, since the specifications shown on the invoices submitted correspond exactly to the descriptions of products classified within CN code ex 8542 11 71 in the annexes to those Regulations;

Whereas Article 1(1) of Regulation (EEC) No 3040/83 lays down that the amount lawfully payable means the amount of import duties which would have been payable if all the particulars had been duly declared;

Whereas Article 1(2), second indent, of the above Regulation lays down that repayment shall be granted if at the time of submission of the application the normal rate of duty has not been re-established;

Whereas Regulation (EEC) No 1656/89 provides for the suspension of duties on the goods in question for the period from 1 July 1989 to 31 December 1989;

Whereas the application for repayment was made in August 1989 when normal duties had not yet been re-established;

Whereas Article 2(1) of Regulation (EEC) No 1430/79 provides that if the amount of the duties taken into account exceeds the amount lawfully payable, the Member State shall repay the difference;

Whereas, in these circumstances, the Italian authorities may repay the duties themselves;

Whereas, in these circumstances, the application for repayment of import duties totalling LIT [REDACTED] may not be taken into consideration under Article 13 of Regulation (EEC) No 1430/79,

HAS ADOPTED THIS DECISION:

Article 1

The request for repayment of import duties of LIT [REDACTED] which is the subject of the request submitted by Italy on 24 February 1992, is inadmissible.

Article 2

This Decision is addressed to Italy.

Done at Brussels, 10.9.1992

For the Commission