

COMMISSION DECISION**of 19-07-1999****finding that repayment of import duties in a particular case is not justified****(request submitted by Denmark)****Ref. REM 19/98**

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 as last amended by Regulation (EC) No 955/1999,²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 502/1999,⁴ and in particular Article 907 thereof,

¹ OJ L 302, 19.10.1992, p.1.

² OJ L 119, 7.5.1999, p.1.

³ OJ L 253, 11.10.1993, p.1.

⁴ OJ L 65, 12.3.1999, p.1.

Whereas by letter dated 23 September 1998, received by the Commission on 25 September 1998, Denmark 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,⁵ as last amended by Regulation (EEC) No 1854/89,⁶ whether repayment of these duties was justified in the following circumstances:

Between 7 June 1990 and 3 April 1993, a Danish firm imported into Denmark thirteen vintage cars (1948-1959). These vehicles were declared as motor cars of heading 8703 of the Combined Nomenclature (CN). Such imports being subject to an ad valorem duty of 10%, the firm duly paid the sum of ~~1.237.000,-~~.

In the light of a judgment delivered by the Court of Justice on 10 October 1985,⁷ the Commission, pursuant to Article 10(1) of Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff,⁸ published in the Official Journal of the European Communities of 30 April 1996 explanatory notes to CN heading 9705.⁹

According to these explanatory notes, vehicles in their original state, without substantial changes to the chassis, steering or braking system, engine etc., at least 30 years old and of a model or type which is no longer in production, and all vehicles manufactured before 1950, actually fall within CN heading 9705 (collections and collectors' pieces) and are therefore exempt from duty.

⁵ OJ L 175, 12.07.1979, p.1.

⁶ OJ L 186, 30.6.1989, p.1.

⁷ Case 200/84 *Erika Daiber v Hauptzollamt Reutlingen* ECR 3363.

⁸ OJ L 256, 7.9.1987, p. 1.

⁹ OJ C 127, 30.4.1996, p. 3.

Inasmuch as the cars in question were imported before the explanatory notes were published and the Danish authorities consider that they satisfy the criteria for classification in CN heading 9705, the firm requested repayment of the duty paid, namely the sum of ██████████.

Whereas the firm said that it had examined the dossier submitted to the Commission by the Danish authorities and had nothing to add;

Whereas by letter of 30 April 1999 the Commission informed the firm of its intention to refuse its request and stated the reasons for its objections;

Whereas by letter of 22 May 1999, received by the Commission on 26 May 1999, the firm responded to these objections; whereas it maintained its view that the circumstances of the case make it a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79, involving neither deception nor obvious negligence on its part; whereas it argued that the Danish customs authorities had not complied with the judgment of 10 October 1985 until explanatory notes were published eleven years later in the Official Journal of the European Communities of 30 April 1996; whereas it also argued that any attempt during this period to import the goods in question duty free would have resulted in action by the competent Danish authorities for the post-clearance recovery of import duties; whereas the firm concluded by arguing, on grounds of legal certainty, that it ought reasonably be able to assume that the Danish customs authorities were applying the legislation correctly;

Whereas the administrative procedure was suspended in accordance with Article 907 of Regulation No (EEC) 2454/93 for the period 30 April-26 May 1999;

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 June 1999 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 referred to in Sections A to D, which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas the Court of Justice of the European Communities, in its judgment of 10 October 1985, ruled that cars could be collectors' pieces if they represented a significant step in the evolution of human achievement or illustrated a period of that evolution;

Whereas the publication on 30 April 1996 of an amendment to the explanatory notes to CN heading 9705 was intended to take account of the above-mentioned judgment and lay down the criteria determining whether a car could be classified in this heading;

Whereas the CN explanatory notes are purely interpretative and therefore without retroactive effect; whereas they must nevertheless be considered to represent what should always have been the correct interpretation of the headings concerned;

Whereas the explanatory note in question must therefore be considered to represent what should always have been the correct interpretation of CN heading 9705;

Whereas publication of the said explanatory note could therefore be used in support of requests for the repayment of import duties under Article 236 of Regulation (EEC) No 2913/92 in respect of import duties payable after 1 January 1994 or Article 2 of Regulation (EEC) No 1430/79 in respect of import duties payable before 1 January 1994;

Whereas, however, these provisions require repayment requests to be submitted within three years of the date on which the amount of the duties was communicated to the debtor;

Whereas repayment requests in this case were not presented in good time;

Whereas, for reasons of legal certainty, the state of the law in a given situation should not constantly be called into question;

Whereas, therefore, the fact that it is too late to submit a request for repayment of import duties under Article 236 of the Regulation (EEC) No 2454/93 or Article 2 of Regulation (EEC) No 1430/79 cannot be held to constitute a special situation within the meaning of Article 13 of Regulation (EEC) 1430/79;

Whereas the fact that the explanatory notes to CN heading 9705 were not published until April 1996 is not such as to give rise to a special situation within the meaning of Article 13 of Regulation (EEC) 1430/79; whereas, from the publication of the Court of Justice's judgment of 10 October 1985, operators were free to declare as collectors' pieces vehicles corresponding to the Court's definition and to contest any other tariff classification applied by the competent Danish authorities;

Whereas the Commission is under no obligation to publish explanatory notes to the Combined Nomenclature;

Whereas the repayment of import duties requested in this case is not justified,

HAS ADOPTED THIS DECISION:

Article 1

Repayment of import duties in the sum of [REDACTED], requested by Denmark on 23 September 1998, is not justified.

Article 2

This Decision is addressed to Denmark.

Done at Brussels, 19-07-1999

For the Commission

Member of the Commission