

Commission Decision
of 30.9.1991
finding that a request for repayment of import duties in a
particular case is inadmissible

(request submitted by the Netherlands)

REM 9/91

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,¹ as last amended by Regulation (EEC) No 3069/86,²

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,³ and in particular Article 8 thereof,

Whereas by letter dated 12 September 1991, received by the Commission on 26 September 1991, the Netherlands 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.

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On 17 June 1988 a consignment of special tallow was declared for free circulation on behalf of a Dutch importer under CN code 15.06.

The Netherlands customs service accepted that classification and levied the corresponding 2% duty.

The goods were then sent on to Germany where German customs had a sample analysed and found that the goods should be classified CN code 15.18 at an import duty of 12%.

When informed of this by their German opposite numbers the Netherlands customs service carried out another analysis, confirming classification under CN code 15.18, and initiated proceedings for post-clearance recovery of the unpaid amount from the declarant.

The declarant paid HFL [REDACTED] but is now applying for repayment, claiming the existence of a special situation arising, according to the importer, from two factors: classification under CN code 15.18 is the result of a mistake in transposition from the old nomenclature in that the increase in duty compared with the old common customs tariff is economically unjustified and causes injury to operators; in any case the former situation was restored from 1 July 1990 by Regulation (EEC) No 1730/90⁴ of 20 June 1990, which suspended import duties on these goods;

4 OJ No L 164, 29.6 1990, p. 1.

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 31 January 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;

Whereas the Council of the European Communities has adopted Regulation (EEC) No 3917/91⁽⁵⁾ of 19 December 1991 amending the classification of these goods with effect from 1 January 1988;

Whereas the import duty applicable at the time of release for free circulation on 17 June 1988 was 2% and the sum levied exceeded what was legally due; whereas the Netherlands authorities can therefore effect repayment themselves under Article 2 of Regulation (EEC) No 1430/79,

HAS ADOPTED THIS DECISION:

Article 1

The request for repayment submitted by the Netherlands on 12 September 1991 is inadmissible.

Article 2

This Decision is addressed to the Netherlands.

Done at Brussels, 23.3.1992

For the Commission

(5) OJ No L 372 of 31.12.1991, p. 29