

Commission Decision
of 26 September 1990
rejecting the application for repayment of import duties
in a particular case as inadmissible

(request submitted by Denmark)

REM 4/90

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,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 of 2 July 1979 on the repayment or remission of import or export duties,³ and in particular Article 8 thereof,

Whereas, by letter dated 2 March 1990, received by the Commission on 6 March 1990, Denmark 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 L 175, 12.7.1979, p.1.

2 OJ L 286, 9.10.1986, p.1.

3 OJ L 352, 13.12.86, p.19.

Between 1 January 1977 and 27 November 1984 a Danish firm imported fishing nets from Japan, Taiwan and South Korea and paid the relevant import duties when the goods were released for free circulation.

As a result of a translation error in the Danish version of Commission Regulation (EEC) No 1535/77 of 4 July 1977 determining the conditions under which certain goods are eligible upon importation for a favourable tariff arrangement by reason of their end use,⁴ the Danish national working tariff, being based on that Regulation, did not mention the possibility for fishing nets supplied to deep-sea vessels to qualify for favourable tariff arrangements amounting to the total suspension of import duties.

Although the error was put right by Commission Regulation (EEC) No 2695/77⁵ and the national working tariff was amended accordingly on 1 January 1978, the firm continued to use the old version of Regulation (EEC) No 1535/77;

On 15 November 1988, after publication of the judgment of the EC Court of Justice in Case No 148/87, the firm applied for repayment of duties paid on goods imported during the period referred to above.

On the basis of customs documents and invoices the firm, working with the customs authorities, calculated the amount of import duty paid for fishing nets released for free circulation between 1977 and 1984, which stands at DKR [REDACTED]

4 OJ No L 171, 9.7.1977, p.1.

5 OJ No L 314, 8 12.1977, p.14.

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 11 June 1990 within the framework of the Committee on Duty Free Arrangements to consider the case in question;

Whereas pursuant to Article 8(2) of Regulation (EEC) No 3799/86 on 13 June 1990 the Commission requested the Danish customs authorities by fax to provide additional information in order to give a ruling, whereas the information required was received by the Commission on 28 June 1990 and, therefore, the time limit within which the Commission must take a decision was extended by 15 days; whereas accordingly the deadline is 21 September 1990 at the latest;

1. as regards the amounts in connection with goods released for free circulation before 1 July 1980:

Whereas the section of the application which refers to import duties amounting to DKR 82 438.60 covering the period referred to above is inadmissible; whereas, in its judgment of 9 November 1989 (Case No 386/87), the Court of Justice has ruled that the provisions of Council Regulation (EEC) No 1430/79 of 2 July 1979 do not apply to claims for repayment of import duty made to the Member State by an importer for duty paid before the Regulation came into force;

2. as regards the amounts in connection with goods released for free circulation after 30 June 1980:

Whereas Article 13 of Regulation (EEC) No 1430/79 provides for a period of twelve months from the date of entry into the accounts of the import duties for an application to be submitted to the customs office at which the formalities for release for free circulation were completed; whereas in the case in question this period was exceeded by three years for the last occasion on which imports were made, and by over seven years for the first such occasion which could be considered under Regulation (EEC) No 1430/79;

Whereas Article 13(2) of that Regulation provides that the customs authorities may authorize an overrun of the time-limit laid down in exceptional cases where there is good reason for doing so; whereas this provision does not, however, confer on national authorities unlimited discretionary powers to grant extensions and whereas the provision is in fact for exceptional use, which must be duly justified;

Whereas on the one hand the case in question is a special one in so far as the Danish authorities continued to be unaware, at least to a degree, of the provisions of Regulation (EEC) No 1535/77, despite the correction to the Danish version of that Regulation made in 1978; whereas on the other hand the firm had in 1982 requested favourable tariff arrangements for fishing nets for reasons of end-use, and whereas it should have taken note at that time of the Community legislation applying to the issue;

Whereas, moreover, the firm had been aware since mid-1987 of the fact that case 148/87 was before the Court and thus of the fact that another firm had applied for repayment in connection with fishing nets, and whereas it should in turn have delayed no further in making an application to the competent customs office, without waiting for the Court's judgment;

Whereas pursuant to Article 2(2) of Regulation (EEC) No 1430/79 the basic time-limit for applications for repayment is three years; whereas this time-limit corresponds to the period for which the customs authorities are obliged to keep documents relating to certificates for the release of goods for free circulation; whereas any interpretation of the second subparagraph of Article 13(2) of the Regulation in question must take account of the fact that the matter of concern is the striking of a balance between individual justice and legal certainty; whereas authorizing an overshoot, in part by a considerable margin, of the usual three-year time-limit laid down in Article 2 of Regulation (EEC) No 1430/79 presents a particular threat to the interests of legal certainty as the evidence relating to imports which took place so far in the past are often no longer available, and whereas any decision would therefore be risky; whereas an interpretation of Article 13 of Regulation (EEC) No 1430/79 which justified so long an extension of the usual time-limit could be contemplated only if the interested party had no means of making an application at an earlier stage, and whereas this is not so in this case, given that the interested party allowed over two years to pass before applying for repayment, after having been informed of the legal situation by the bringing of case 148/87 before the Court;

Whereas its application should therefore be considered clearly inadmissible and should not have been accepted by the Danish authorities;

Whereas it is not possible to claim discrimination vis-à-vis the firm which began the legal proceedings leading to the Court's judgment in Case 148/87, since that firm had acted within the time limit prescribed by the Community legislation;

Whereas, in the circumstances, the application for repayment of import duty of DKR 246 669.20 in relation to the period in question is not admissible under the provisions of Article 13 of Regulation (EEC) No 1430/79,

HAS ADOPTED THIS DECISION:

Article 1

The application for repayment of the import duties of DKR [REDACTED] requested by Denmark in its letter of 2 March 1990 is hereby rejected as inadmissible.

Article 2

This Decision is addressed to Denmark.

Done at Brussels,
20/9/90

For the Commission