

**COMMISSION DECISION**

of 1992

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

(request submitted by Belgium)

**REM 15/92**

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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 9 November 1992 and received by the Commission on  
13 November 1992, Belgium asked the Commission to decide under Article 13  
of Regulation (EEC) No 1430/79 whether or not the repayment of import  
duties is justified in the following circumstances:

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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.

An Andorra-based company has for a number of years imported tobacco from the United States destined for Andorra. These imports arrived by boat at Antwerp, where they were entered for free circulation before being sent via France to Andorra under the T2 transit procedure. This procedure was used until 1 July 1991.

Until that date, the transit of goods to Andorra, not in free circulation in the Community in accordance with Articles 9 and 10 of the Treaty, were subject to production of a special authorisation, whereas no authorisation was required for goods in free circulation. This is why the company entered the tobacco for free circulation in Antwerp. However, under Community rules this release for free circulation could take place in any Member State.

This requirement concerning entry to free circulation being not in conformity with the transit regime or Article V of GATT, France modified its rules in order to comply with the Community rules. From 1st July 1991, the goods could be transported to Andorra without payment of customs duties. In the light of this change, the firm in November 1991 applied on the basis of Article 3 of Regulation (EEC) No 1430/79 for the repayment in full of the import duties paid on imports during the previous three years. Belgian customs rejected this request on the grounds that the three-month time limit for the lodging of the application had expired.

In December 1991 the firm again applied for repayment, this time on the basis of Article 13 of Regulation (EEC) No 1430/79, arguing that it had entered the goods for free circulation not by error but because it had no choice, French law requiring that goods from outside the Community be entered for free circulation before being transported to Andorra.

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 8 January 1993 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 referred to 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 tobacco was deliberately entered for free circulation in Antwerp at the applicant's request to satisfy French requirements, and therefore cannot be considered to have been entered in error for free circulation in a way giving rise to repayment pursuant to Article 3 of Regulation (EEC) No 1430/79;

Whereas the French requirement that third-country goods destined for Andorra be entered for release into free circulation was inconsistent with both the rules on Community transit and Article V of the GATT which forms part of Community law; whereas therefore no customs debt came into being in so far as it can be established that the goods entered for release actually reached Andorra, and there does not therefore exist a special situation in the sense of Article 13 of Regulation (EEC) No 1430/79;

Whereas Article 2(1) of Regulation (EEC) 1430/79 provides that import duties shall be repaid or remitted in so far as the competent authorities are satisfied that the amount of such duties entered in the accounts relates to goods in respect of which there was no customs debt;

Whereas the Belgian authorities may in these circumstances themselves repay the customs duties;

Whereas, in the circumstances, the request for repayment of import duties cannot be dealt with under Article 13 of Regulation (EEC) No 1430/79,

HAS ADOPTED THIS DECISION:

Article 1

The request for repayment of import duties presented by Belgium on 9 November 1992 is inadmissible.

Article 2

This Decision is addressed to Belgium.

Done at Brussels, 12.5.1993

For the Commission