

COMMISSION DECISION

of 23.10.92

finding that the repayment of import duties in a particular case is justified

(request submitted by Italy)

REM 18/92

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 16 November 1992, received by the Commission on 1 December 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 1 January and 2 March 1988, a number of Italian firms imported wild mushrooms of the genus "muscaria comusum" originating in Morocco and Tunisia.

The onions were classified under Combined Nomenclature (CN) Code 07 03, for which 12% customs duty was payable, and released for free circulation. However, they should have been classified under CN Code 0709 at 16% duty.

The importers' classification was accepted by Italian customs on the basis of the customary national tariff which contained erroneous information on the products concerned, an error which itself arose from erroneous information contained in the integrated Community Tariff (TARIC).

Although the TARIC databank was corrected on 11 November 1987 and the relevant information was circulated to all Member States at the beginning of December 1987, the Italian customs offices were only informed of the correction by their Headquarters on 1 March 1988.

After this date, the customs offices recovered the duty corresponding to the difference between the amount due (16%) and that already paid (12%).

Some firms appealed against the recovery (files sent to the Commission and yielding favourable decisions; REC 4/91 and REC 6/92), whilst others paid the difference in the duty due but lodged a claim for the repayment of the duty recovered.

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 25 March 1993 within the framework of the Committee on Duty Free Arrangements to consider the case in question;

Whereas, in accordance with Article 13 (1), of Regulation (EEC) No 1430/79, the reimbursement or remission of import duties may be authorised in special situations other than those laid down in sections A to D of the said regulation resulting from circumstances which do not imply any negligence or deception on the part of the person concerned;

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Whereas, identical cases have been the subject of requests for the non-recovery of duty (cases REC 4/91 and 6/92) and these were treated favourably by the Commission; whereas the reasons for the decision in those cases also apply to this case;

Whereas an error by the administration which could not have been detected by the persons liable for payment constitutes a special situation within the meaning of Regulation (EEC) No. 1430/79;

Whereas the circumstances of the case in question do not imply any negligence or deception on the part of the person concerned.

Whereas it is therefore justified in this case to grant the repayment of import duties requested,

HAS ADOPTED THIS DECISION :

Article 1

The repayment of the import duties of LIT [REDACTED] requested by Italy on 16 November 1992 is hereby found to be justified.

Article 2

This Decision is addressed to Italy.

Done at Brussels, 28.5.1993

For the Commission