

COMMISSION DECISION

of 7.12.91.

finding that the repayment of import duties in a particular case is not justified

(request submitted by the Netherlands)

REM 5/91

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 4 July 1991, received by the Commission on 12 July 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

Between March 1988 and January 1989 a customs agent made seven declarations for release for free circulation in respect of potassium manganate (Combined Nomenclature Code 28416000) on behalf of the importer, indicating Hong Kong as the country of origin and of consignment.

The origin was accepted by the Dutch customs services, who therefore applied 6.9% customs duty amounting to [REDACTED] Florins.

After an inspection carried out by the Customs Investigation Department of the Tax Information and Investigation Service (FIOD) it became apparent that the goods in question in fact originated in China. A variable anti-dumping duty should therefore have been applied to them while, as regards the customs duty, they could have qualified for a preferential 0% tariff, subject to production of valid Chinese certificates of origin. The anti-dumping duty was recovered on 17 August 1990.

According to information supplied by the FIOD, the exporter stated in the course of the inspection in Hong Kong that the goods had been sent to the Netherlands as being goods from Hong Kong, on the instructions of the Dutch importer. Furthermore, the exporter handed over three (Chinese) certificates of origin to the Commission delegation covering three of the seven declarations for release for free circulation.

Taking all the facts into account, the customs agent first applied for repayment of import duties on the basis of Article 2 of Regulation (EEC) No 1430/79. That application was refused by the Dutch customs administration on the grounds that there had not been any error in this particular case. The agent then applied for repayment of the customs duty on the basis of Article 13 of Regulation (EEC) No 1430/79.

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 20 November 1991 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;

Whereas, in this case the customs agent was rightly prevented by the Dutch administration from applying the provisions of Article 2 of Regulation (EEC) No 1430/79, since the importer on whose behalf he was acting had deliberately brought upon himself the charging of an amount higher than that legally due by declaring the origin of the goods falsely;

Whereas these same circumstances also preclude there being a special situation which may give rise to a right to repayment on the basis of Article 13 of Regulation (EEC) No 1430/79;

Whereas after all recognizing the existence of a special situation in circumstances of this sort would go against the very intentions of the provisions on repayment and remission by encouraging the actions of unscrupulous importers, who could be tempted to use the good faith of intermediaries in order to carry out unlawful acts;

Whereas, lastly, the production by the Hong Kong exporter during the investigation of origin certificates covering part of the imported goods is not such as to change this analysis;

Whereas it is not 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 [REDACTED] Florins requested by the Netherlands on 4 July 1991 is hereby found not to be justified.

Article 2

This Decision is addressed to the Netherlands.

Done at Brussels, 17.12.1991

For the Commission