

# COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11 February 1993

C(93) 275 final

NOT FOR PUBLICATION

COMMISSION DECISION  
of 11 February 1993  
finding that the repayment of import duties in a particular case  
is not justified

(request submitted by the United Kingdom)

REM 9/92

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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 4 August 1992, received by the Commission on 12 August 1992, the United Kingdom 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:

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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.

REMB/NON

A United Kingdom firm has been importing special rivets for the aerospace industry since 1984.

In 1984 it asked the UK customs administration what the tariff classification of these rivets was, and customs classified the goods under three different tariff headings, on the basis of the constituent metal, namely headings CCCN 73 32 34 00, 75 06 20 00 and 76 16 29 00, subject to customs duty of 7.6%, 4.3% and 8.1% respectively.

Between 1984 and 1990 the firm effected between 350 and 400 imports using the tariff classification indicated.

In 1990, since it wanted to install a customs warehouse, the firm called on the services of an accounting firm. The latter said that the rivets should be classified under tariff heading 83 08 20 000 of the HS, a heading for which the duty was 4.6%. Customs recognized this classification, and also admitted having made a mistake in 1984.

At the time the duty for the correct tariff heading was 5.3%, i.e. a lower duty than that for two of three headings given.

The importer considers that the excess duty paid is about £100 000, the sum for the imports effected between 1984 and 1987 being [REDACTED].

The documents concerning the declarations lodged during this period have been destroyed, but the calculations were made under the supervision of the customs office concerned, which testifies to the accuracy of the sum calculated.

The firm requested reimbursement of the excess duties paid.

For the period 1987-90, the UK administration granted the reimbursement on the basis of Article 2 of Regulation (EEC) No 1430/79.

For imports effected over the previous period, from 1984 to 1987, the firm requested reimbursement on the basis of Article 13 of Regulation (EEC) No 1430/79.

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, which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas Article 2(1) of Regulation (EEC) No 1430/79 provides for the reimbursement of import duties the amount of which entered in the accounts exceeds the amount lawfully payable, and whereas Article 2(2) of that Regulation authorizes repayment or remittance only in respect of imports for which an application is made within three years from the date on which the duties were entered in the accounts;

Whereas an identical period applies to the party liable to duty in the event of subsequent recovery of duties lawfully payable; whereas the aim of the restriction of the period during which payment may be claimed is to prevent certain previous occurrences from being called in question again after a certain time, and whereas provisions of this kind play an important part in creating certainty as to the law in relations between the administration and the party liable to duty;

Whereas the fact that the period has elapsed cannot therefore be considered as an exceptional situation within the meaning of Article 13, especially as Article 2(2) allows an exception only where the party concerned has been prevented from submitting his application by unforeseeable circumstances or force majeure;

REMB/NON

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 ██████████ requested by the United Kingdom on 4 August 1992 is hereby found not to be justified.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 11 February 1993

For the Commission  
Ch. SCRIVENER  
Member of the Commission

