

COMMISSION DECISION

of 6-10-1994

finding that requests for the repayment of import duties in particular

cases are inadmissible

(Requests submitted by France)

**REM 12/94, REM 13/94 and REM 14/94**

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code,<sup>1</sup>

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,<sup>2</sup> and in particular Article 907 thereof,

Whereas by letters dated 31 March 1994, received by the Commission on 6 April, France asked the Commission to decide, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,<sup>3</sup> as last amended by Regulation (EEC) No 3069/86,<sup>4</sup> whether the repayment of import duties was justified in the following circumstances:

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<sup>1</sup> OJ No L 302, 19.10.1992, p.1.

<sup>2</sup> OJ No L 253, 11.10.1993, p.1.

<sup>3</sup> OJ No L 175, 12.7.1979, p.1.

<sup>4</sup> OJ No L 286, 9.10.1986, p.1.

Until 2 March 1990 a French firm imported marine worms for fishing bait from South Korea, the United States and Canada and declared them under tariff heading 0106 00 90, a heading exempt from duty. After this date, the customs authorities decided that, in accordance with the classification rules in force at the time, such worms fell within heading 0307 91 00, a heading subject to a customs duty of 11%. The tariff heading was amended accordingly and subsequent imports were declared under this heading.

As a result of Commission Regulation (EEC) No 731/93 of 26 March 1993 concerning the classification of certain goods in the Combined Nomenclature,<sup>5</sup> the Annex to which lays down that such worms are not considered to be aquatic invertebrates within the meaning of tariff heading 0307, they were classified within heading 0106 00 90 with effect from 16 April 1993.

On 31 August 1993 the importer asked for repayment of the customs duties paid for declarations made since 21 February 1991.

Whereas in accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 4 July within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) 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 laid down 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 Regulation (EEC) No 731/93 interprets Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff,<sup>6</sup> as last amended by Regulation (EEC) No 558/93<sup>7</sup>;

Whereas Regulation (EEC) No 731/93 did not create a new classification; whereas it thereby merely confirmed the classification within tariff heading 0106 00 90, which had therefore always been the valid heading;

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<sup>5</sup> OJ No L 75, 30.3.1993, p.7.

<sup>6</sup> OJ No L 256, 7.9.1987, p. 1.

<sup>7</sup> OJ No L 58, 11.3.1993, p. 50.

Whereas, therefore, no customs debt was incurred for imports declared after 2 March 1990;

Whereas Article 2(1) of Regulation (EEC) No 1430/79 provides that import duties shall be repaid or remitted where it is established to the satisfaction of the competent authorities that the amount of such duties entered in the accounts relates to goods for which no customs debt was incurred;

Whereas in these circumstances the French authorities may repay the duty themselves;

Whereas, in these circumstances, the requests for repayment of import duties may not be considered under Article 13 of Regulation (EEC) No 1430/79,

HAS ADOPTED THIS DECISION:

Article 1

The requests for repayment of import duties in the sums of XXXX and XXXXX submitted by France on 31 March 1994 under the reference numbers REM 12/94, REM 13/94 and REM 14/94 are hereby found to be inadmissible.

Article 2

This Decision is addressed to France.

Done at Brussels, 6-10-1994

For the Commission