

COMMISSION DECISION

of 22-07-1997

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

(request submitted by THE NETHERLANDS)

REM 3/97



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,¹

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, and in
particular Article 907 thereof,²

Whereas by letter dated 17 February 1997, received by the Commission on 25 February
1997, the Netherlands 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,³ as last amended by Regulation (EEC) No 3069/86,⁴ whether the
repayment of import duties is justified in the following circumstances:

¹ OJ No L 302, 19.10.1992, p.1.

² OJ No L 253, 11.10.1993, p.1.

³ OJ No L 175, 12.07.1979, p.1.

⁴ OJ No L 286, 09.10.1986, p.1.

Between 19 February 1981 and 23 June 1983 a Dutch company (“the operator”), submitted 98 import declarations for poultry cuts. On 3 October 1986 a demand was made for post-clearance payment of agricultural levies, on the grounds that the invoices submitted included incorrect information. The demand was contested in the appropriate Dutch court, namely the *College van Beroep voor het Bedrijfsleven* (the Industrial Appeals Tribunal – “the CBB”). On 12 October 1990 the CBB rejected the operator’s appeal. On 29 October 1990 the operator submitted a request for a total of XXXXX under Article 13 of Regulation (EEC) No 1430/79. The Inspectorate declared the request inadmissible on the grounds that it had been made too late. The operator appealed against that decision.

On 25 February 1994 the CBB found in the operator’s favour. Consequently, by letter of 29 April 1994, the Netherlands asked the Commission to decide whether remission of duties was justified in this case. By its Decision C (94) 3003 of 14 November 1994, the Commission decided that the remission of duties was not justified.

After the operator appealed against this Decision to the Court of First Instance of the European Communities, the Commission, noting the judgment delivered on 9 November 1995 by the First Chamber of the Court in case [T-346/94](#), published Decision C(96)1397 of 31 May 1996 revoking its Decision of 14 November 1994, on the grounds that the case submitted to it had not fulfilled the requisite conditions to enable the Commission to adopt a Decision in accordance with administrative procedures guaranteeing the operator a right to a hearing;

Whereas the operator states that he has seen the dossier submitted to the Commission by the Dutch authorities and has nothing to add; whereas he further sent a statement of his position to the Dutch authorities, which forwarded it to the Commission in annex to their letter of 17 February 1997;

Whereas the file submitted by the Dutch authorities shows that the case involves acts liable to criminal court proceedings and that the person concerned pointed out the fact that in other Member States the time-limits for post-clearance recovery of duty differ;

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 22 May 1997 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, in Community law, a document later found to be forged, falsified or incorrect, even where it has been presented in good faith by the person liable for payment, does not constitute sufficient grounds for granting repayment or remission;

Whereas the risk that invoices may prove to be incorrect is a business risk run by all customs declarants, for which they bear liability;

Whereas the simple fact that they are incorrect cannot be considered a special circumstance;

Whereas the fact that the time-limits for post-clearance recovery of duty under national law differ, in the event of acts liable to criminal court proceedings, does not constitute a special situation within the meaning of Article 13 of Regulation No 1430/79;

Whereas, therefore, the repayment of import duties requested is not justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXX requested by the Netherlands on 17 February 1997 is hereby found not to be justified.

Article 2

This Decision is addressed to the Netherlands.

Done at Brussels, 22-07-1997

For the Commission