Commission Decision

of .....

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

(request submitted by the Netherlands)

REM 7/93

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 1 March 1993, received by the Commission on 8 March 1993, the Netherlands asked the Commission to decide under Article 13 of Regulation (EEC) No 1430/79 whether or not 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.

On 27 February 1991 a Dutch firm imported raw materials for animal feedingstuffs which it declared under tariff heading 23 06 9091 of the Combined Nomenclature (residues resulting from the extraction of germ of maize), a heading exempt from customs duty.

Following analysis of a sample, the customs administration classified the product under tariff heading 23 09 9051 of the Combined Nomenclature, a heading subject to an agricultural levy, and consequently collected Fl [redacted] in duties.

The accepted tariff classification results from an analysis conducted by the microscopic analysis method, which determined the following composition: on the basis of the dry material content: 3.2% fat, 13.8% protein and 34.4% starch.

At the time of these imports, discussions were being conducted between the European Community and the United States on the application of the GATT concession for certain types of raw materials for animal feed made of residues from the processing of corn. These discussions culminated in the signing of a Memorandum of Understanding on 15 October 1991; this provided for the suspension of the agricultural levy, subject to certain conditions, with retroactive effect from 1 January 1991.

The definition of this product in the Memorandum states that the maximum starch content is 28%.

The Regulation which incorporated this Memorandum into Community law, namely Regulation (EEC) No 3799/91,[4] therefore laid down that the collection of duties relating to certain products falling within Combined Nomenclature codes 23 09 9131 and 23 09 9041 should be suspended. Under this Regulation, for the second of these tariff headings, the starch content calculated on the basis of the dried product had to be not exceeding 28%.

The firm in question requested repayment of the duties which it had to pay, on the basis of Article 13 of Regulation (EEC) No 1430/79, for the following reasons:

4 OJ No L 357, 31.12.1991, p. 9.

- the microscopic analysis method used by the Netherlands administration is not recognized as reliable by all the Member states, and is even contested by the Netherlands administration in this specific case;

- at the time of import, the firm did not know that a maximum of 28% starch would be laid down in the Memorandum signed by the Community and the United States for products qualifying for suspension of the levy.

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 3 June 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 resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas the customs office at which the goods had been declared for release for free circulation on 27 February 1991 classified the goods under CN heading 23 09 90 51, although the declaration had been made under heading 23 06 90 91;

Whereas a change in the classification of goods from that initially declared following an analysis by the customs authorities does not in itself constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 referred to above;

Whereas, similarly, the fact that this classification prevents the goods from qualifying for the suspension of import duties provided for in Council Regulation (EEC) No 3799/91 does not constitute a special situation within the meaning of that Article;

Whereas, moreover, the goods did not qualify for the suspension of import duties provided for in Council Regulation (EEC) No 3799/91 under the heading initially declared by the importer either;

Whereas if the firm contests the validity of a certain method of analysis used in the event, it calls into question the existence of a customs debt; whereas, in this case, repayment could be granted under Article 2 of Regulation (EEC) No 1430/79, either at the request of the customs authority concerned, or automatically where the customs authorities themselves establish that there is no customs debt;

Whereas, therefore, the repayment of import duties requested under Article 13 of the Regulation referred to above is not justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of Fl [redacted] requested by the Netherlands on 8 March 1993 is hereby found not to be justified.

Article 2

This Decision is addressed to the Netherlands.

Done at Brussels, 20. 7. 1993

For the Commission