

COMMISSION DECISION

of 14.4.1993

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

(request submitted by Luxembourg)

REM 6/93

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 18 February 1993, received by the Commission on 25
February 1993, Luxembourg 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:

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.

During 1989 a Luxembourg firm imported vanadium oxides and hydroxides under the inward processing relief arrangements (drawback system).

Following processing of the import goods into ferro-vanadium, the compensating products were exported to Romania via Rotterdam.

Disregarding the firm's instructions, the customs agent responsible for completing the customs formalities drew up an ordinary export declaration (COM 1) instead of an EX 3 declaration (re-exportation).

The employee in charge of the firm's sales department who, on seeing the return copy of the transit document should have noticed that the instructions given by the firm had been disregarded and should have contacted the customs authorities without delay to rectify the situation, was guilty of negligence - as the firm put it - and failed to notice the mistake which had been made.

As a result, the compensating products being exported were not examined to identify the import goods which they incorporated.

Furthermore, examination of the documents reveals that the export declaration (COM 1 dated 22 June 1989) was lodged before the import declarations which it was supposed to discharge (IM4s dated 31 October 1989 and 17 October 1989).

The firm is requesting the repayment of import duties totalling BEF [REDACTED] under 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 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 Article 4(c) of Regulation (EEC) No 1999/85 on inward processing relief arrangements lays down that an authorization shall be granted only where it is possible to identify the import goods in the compensating products or, in cases where the equivalence system is used, where it is possible to verify whether the conditions laid down in respect of equivalent goods have been complied with;⁴

Whereas examination of the documents has shown that the company is attempting to discharge the arrangements by citing export operations which took place before the import of goods placed under the inward processing relief arrangements;

Whereas Article 25 of Regulation (EEC) No 1999/85 rules out application of the system of prior exportation referred to in Article 2(1)b in the case of an authorization issued under the drawback system; whereas, therefore, the rules relevant to the customs procedure concerned have not been complied with;

Whereas neither the declarant's failure to follow the firm's instructions nor the mistake by the firm's employee who failed to notice that an incorrect declaration had been made constitutes a special situation within the meaning of Article 13 of Regulation No 1430/79;

4 OJ No L 188, 20.7.1985

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 BEF [REDACTED] requested by Luxembourg on 18 February 1993 is hereby found not to be justified.

Article 2

This Decision is addressed to Luxembourg.

Done at Brussels, 14.7.1993

For the Commission