

EN

REM 37/99



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.4.2000

COMMISSION DECISION

Of 6.4.2000

finding that repayment of import duties is justified in a particular case

**(Request submitted by the United Kingdom of Great Britain and Northern
Ireland)**

(REM 37/99)

FR

COMMISSION DECISION

Of 6.4.2000

finding that repayment of import duties is justified in a particular case

**(Request submitted by the United Kingdom of Great Britain and Northern
Ireland)**

(REM 37/99)

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 as last amended by Regulation (EC) No 955/1999;²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 1662/1999,⁴ and in particular Article 907 thereof,

¹ OJ L 302, 19.10.1992, p.1

² OJ L 119, 7.5.1999, p.1

³ OJ L 253, 11.10.1993, p.1

⁴ OJ L 197, 29.7.1999, p.25

Whereas:

- (1) By letter dated 9 July 1999, received by the Commission on 13 July 1999, the United Kingdom asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties was justified in the following circumstances.
- (2) On 2 January 1997 a United Kingdom company released for free circulation a consignment of barley for malting to be used to manufacture beer “aged in vats over beechwood”, and presented import licences issued in 1996.
- (3) Council Regulation (EC) No 537/97 of 18 March 1997 opening a Community tariff quota for barley for malting falling within CN code 1003 00⁵ retroactively opened a quota for high graded barley intended for the production of malt to be used for the manufacture of certain beer aged in tanks containing beechwood, for the period from 1 June 1996 to 31 December 1996. The quota gave entitlement to the application of a reduced rate of import duty.
- (4) The detailed rules for the application of that Regulation were set out in Commission Regulation (EC) No 704/97 of 18 April 1997 laying down detailed rules for the application of Council Regulation (EC) No 537/97 and providing for the partial reimbursement of import duties levied on 30 000 tonnes of barley for malting.⁶
- (5) Article 1(1) of that Regulation, in particular, in the English version, restricted the quota to imports of barley released for free circulation between 1 June and 31 December 1996.

⁵ OJ L 83, 25.3.1997, p.7

⁶ OJ L 104, 22.4.1997, p. 20

- (6) Since the import referred to in this case was released for free circulation on 2 January 1997, the company was not eligible to benefit from the quota. It did not therefore apply for the partial reimbursement of import duties for which it would have been eligible if the tariff quota had been applicable.
- (7) Council Regulation (EC) No 1099/98 of 25 May 1998 opening a Community tariff quota for barley for malting falling within CN code 1003 00⁷ opened a new quota for the same product for 1997 and 1998. This quota also gave entitlement to the retroactive application of a reduced rate of import duty.
- (8) The detailed rules for the application of that Regulation were set out in Commission Regulation (EC) No 1679/98 of 29 July 1998 laying down detailed rules for the application of Council Regulation (EC) No 1099/98 and providing for the partial reimbursement of import duties levied on a quota of barley for malting.⁸
- (9) Article 1(1) of that Regulation restricts application of the quota for 1997 to imports of barley for which import licence applications were submitted between 1 January and 31 December 1997.
- (10) The company was not eligible to apply for this quota since its application for the import licences for the consignment released for free circulation on 2 January 1997 had been submitted in December 1996 and not in 1997.

⁷ OJ L 157, 30.05.1998, p. 9

⁸ OJ L 212, 30.07.1998, p. 29

- (11) The company considered that it had been prevented from benefiting from a tariff quota because of a gap in Community legislation and therefore applied under Article 239 of Regulation (EEC) No 2913/92 for repayment of a sum of import duties corresponding to the difference between the amount it had paid and the amount it would have had to pay if it had been eligible for the tariff quota, i.e. XXXXX.
- (12) The company has stated that it has seen the dossier submitted to the Commission by the United Kingdom and has nothing to add.
- (13) 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 October 1999 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (14) Article 239 of Regulation (EEC) No 2913/92 allows import duties to be repaid or remitted in situations other than those referred to in Articles 236, 237 and 238 of that Regulation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (15) As the United Kingdom authorities confirm, the barley released for free circulation by the company on 2 January 1997 met the criteria set out in the relevant Community legislation for entitlement to the quota for barley for malting.

- (16) In this case it seems that a number of language versions of Regulation (EC) No 704/97, including the English one, contained an error. They wrongly restricted access to the tariff quota for 1996 to goods released for free circulation between 1 June and 31 December 1996. Yet a number of other language versions of the same Regulation, and the second recital of the English language version indicate that the tariff quota could be applied to any traders who had imported quantities of barley for malting for which an import licence application had been submitted between 1 June 1996 and 31 December 1996.
- (17) It is therefore as the result of an error in the English language version of Regulation (EC) No 704/97 that the company did not apply to benefit from the tariff quota provided for by that Regulation. This circumstance constitutes a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (18) It is also clear from the facts that neither obvious negligence nor deceit of any sort can be attributed to the company in this case. A trader cannot be blamed for not applying within the time limit for an advantage under Community legislation if he has not applied because of an error in the language version of the text which he consulted and which was published in the Official Journal of the European Communities.
- (19) Therefore the repayment of import duties requested is justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXX referred to in the request from the United Kingdom of Great Britain and Northern Ireland dated 9 July 1999 is hereby found to be justified.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 6.4.2000

For the Commission

Member of the Commission