

COMMISSION DECISION

of 22.7.1993

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

(request submitted by Germany)

REM 12/93

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 22 March 1993, received by the Commission on 2 April 1993, Germany asked the Commission to decide under Article 13 of Regulation (EEC) No 1430/79 whether or not the repayment of import duties amounting to DM 985 234.46 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.

Between 1985 and 1988 a German firm exported polyurethane film to Canada where it was cut to shape and some of the cut film reimported into the Community.

When the cut film was imported it was entered for free circulation with the customs value given as the cost of processing in Canada and the customs duties were calculated on that amount.

A check revealed the error and additional customs duties totalling DM [REDACTED] were levied on the firm, a sum corresponding to the difference between the total duty due on the goods and the amount of duty already paid.

The firm has asked for repayment of the recovered duties, arguing that these operations should in fact have been entered for the outward processing arrangements and should, therefore, be subject only to the differential duty. It explained that the error was due to the fact that the employee responsible for customs formalities was new to the job and had failed to ask for outward processing authorizations.

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 firm in question wishes to benefit from the differential duty applicable under the outward processing arrangements;

Whereas these customs arrangements are accorded on condition that a request is made before the export of the goods; whereas no request was made in this case, meaning that the provisions of the outward processing arrangements were not complied with;

Whereas the error committed by the firm's employee was often repeated between 1985 and 1988 and never corrected by the firm;

Whereas, while staff turnover can create difficulties for a firm, it does not constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79; whereas the fact that the error was repeated does nothing to change the position;

Whereas the conditions of Article 13 of Regulation (EEC) No 1430/79 are therefore not fulfilled;

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 to sum of DM [REDACTED] requested by Germany on 22 March 1993 is hereby found not to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 22-9-1993

For the Commission