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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.03.2002

**COMMISSION DECISION**

**of 15.03.2002**

**finding that remission of duties is justified in a particular case and refusing Germany authorisation under Article 908 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92**

**(Request submitted by the Federal Republic of Germany)  
(REM 08/2001)**

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**(Request submitted by the Federal Republic of Germany)  
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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,<sup>1</sup> as last amended by Regulation (EC) No 2700/2000,<sup>2</sup>

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,<sup>3</sup> as last amended by Regulation (EC) No 993/2001,<sup>4</sup> and in particular Article 907 thereof,

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<sup>1</sup> OJ L 302, 19.10.1992, p.1.

<sup>2</sup> OJ L 311, 12.12.2000, p. 17.

<sup>3</sup> OJ L 253, 11.10.1993, p. 1.

<sup>4</sup> OJ L 33, 28.05.2001, p. 1.

Whereas:

- (1) By letter dated 11 July 2000, received by the Commission on 22 March 2001, the Federal Republic of Germany 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,<sup>5</sup> as last amended by Regulation (EEC) No 1854/89,<sup>6</sup> and under Article 239 of Regulation (EEC) No 2913/92, whether repayment of duties was justified in the following circumstances.
- (2) From 15 November 1993 to 14 November 1995 a German firm released office and school supplies from the Republic of Slovenia for free circulation. Valid EUR 1 certificates were presented for all the goods. The goods were therefore granted complete exemption from import duties under the Cooperation Agreement between the European Economic Community and the Republic of Slovenia.<sup>7</sup> The goods were transported under the Community transit procedure directly to the firm, although it had not been granted the status of "authorised consignee". The firm informed its forwarding agent of the arrival of the goods. The forwarding agent, who did have the status of "authorised consignee", submitted the transit documents to the competent customs office and entered the address of his own company rather than that of the consignee firm as the place of delivery of the goods. During part of the period concerned the forwarding agent himself removed the seals and took reception of the transit documents from the driver. The consignee firm then took on these tasks, although it passed the seals and transit documents onto the forwarding agent the same day as the goods arrived.

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<sup>5</sup> OJ L 175, 12.07.1979, p.1.

<sup>6</sup> OJ L 186, 30.06.1989, p.1.

<sup>7</sup> OJ L 189, 29.7.1993, p.2.

- (3) The competent customs authorities therefore claimed import duties of XXXXX from the forwarding agent under Article 203 of Regulation (EEC) No 2913/92; this is the amount for which remission is requested.
- (4) In support of the request submitted by the competent German authorities, the forwarding agent, pursuant to Article 905 of Regulation (EEC) No 2454/93, stated that it had taken note of the file sent to the Commission by the German authorities and that it had nothing to add.
- (5) By letter of 14 September 2001 the Commission requested further information from the German authorities. This information was provided by letter dated 29 November 2001, received by the Commission on 7 December 2001. The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 15 September 2001 and 7 December 2001.
- (6) 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 17 January 2002 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (7) As regards the part of the debt incurred before 1 January 1994, Article 13(1) of Regulation (EEC) No 1430/79 allows import duties to 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.
- (8) As regards the part of the debt incurred from 1 January 1994 onwards, Article 239(1) of Regulation (EEC) No 2913/92 allows import duties to be repaid or remitted in special situations other than those laid down 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.

- (9) The Court of Justice of the European Communities has consistently taken the view that these provisions represent a general principle of equity designed to cover an exceptional situation in which an operator which would not otherwise have incurred the costs associated with post-clearance entry in the accounts of customs duties might find itself, compared with other operators carrying out the same activity.
- (10) The fact that the competent customs authorities for several years (November 1993 to November 1995) accepted a large number of transit documents submitted by the forwarding agent without making any objection to the absence of appropriate checks could firstly have led the forwarding agent to believe that his practices were correct and secondly was an active error on the part of the authorities, and as such gave rise to a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 and Article 239 of Regulation (EEC) No 2913/92.
- (11) Another factor that contributed to this special situation was the fact that, as the German authorities confirmed in their letter of 29 November 2001, valid EUR 1 certificates had been presented for all the goods concerned - corresponding to import duties of XXXXXX - which made the goods eligible for duty-free release for free circulation under the Cooperation Agreement between the European Economic Community and the Republic of Slovenia. Thus, if the forwarding agent had completed the formalities for release for free circulation properly, the goods would have been eligible for complete exemption from duties.
- (12) The financial interests of the European Communities were not therefore affected in this case.

- (13) The last factor contributing to this special situation as regards the debt incurred after 1 January 1995 is the fact that since that date Article 900(1)(o) of Regulation (EEC) No 2454/93 authorises the customs authorities of the Member States to repay duties if the customs debt has been incurred otherwise than under Article 201 of the Code and the person concerned is able to produce a certificate of origin, a movement certificate, an internal Community transit document or other appropriate document showing that if the imported goods had been entered for free circulation they would have been eligible for Community treatment or preferential tariff treatment, provided the other conditions referred to in Article 890 of the same Regulation were satisfied and provided that the situation concerned involved neither deception nor obvious negligence on the part of the person concerned.
- (14) In this case the German authorities stated that these conditions were fulfilled.
- (15) In the circumstances of this case no deception or obvious negligence can be attributed to the person concerned, as the competent German authorities confirmed in their letter to the Commission of 11 July 2000.
- (16) The circumstances of this case therefore constitute a special situation in which no deception or obvious negligence may be attributed to the person concerned.
- (17) Remission of import duties is therefore justified in this case.
- (18) Under Article 908 of Regulation (EEC) No 2454/93, where the circumstances under consideration justify repayment or remission, the Commission may, under conditions which it shall determine, authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and of law.

- (19) In a letter of 11 July 2000, received by the Commission on 22 March 2001, the Federal Republic of Germany requested authorisation to repay or remit duties in other cases involving comparable issues of fact and law.
- (20) This case is however quite unique in terms of both fact and law. It cannot therefore serve as a reference for national decisions taken in application of an authorisation granted by the Commission,



HAS ADOPTED THIS DECISION:

*Article 1*

The remission of import duties in the sum of XXXXXX requested by the Federal Republic of Germany on 11 July 2000 is justified.

*Article 2*

The authorisation requested by the Federal Republic of Germany in its letter of 11 July 2000 under Article 908 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92 is not granted.

*Article 3*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 15.03.2002.

*For the Commission*

*[...]*

*Member of the Commission*