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

(request submitted by Germany)

REM 19/92
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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 26 November 1992, received by the Commission on 4 December 1992, Germany asked the Commission to decide under Article 13 of Regulation (EEC) No 1430/79 whether or not the repayment/remission 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.

In 1992 a German firm purchased pigs and cattle for slaughter from farms near the border with Switzerland, with a view to exporting the meat.

The firm's usual abattoir at Lörrach had its EEC licence withdrawn from 3 March to 5 August 1992.

Another abattoir therefore had to be used, and the nearest to the animals' collection point, apart from Lörrach, was in Basle. Alternatives within Germany, such as Freiburg, would have increased the journey by about 80 kilometres and at least two hours, leading to additional deaths among the animals in transport. Considerations of animal welfare as well as cost therefore would have dictated the firm's choice of an abattoir outside the Community.

The firm duly applied for and obtained an outward processing authorization for slaughter of the animals in Switzerland during such time as Lörrach was without its EEC licence.

When the meat was reimported under the outward processing arrangements customs duties and levies totalling DM ████████ were collected (DM ████████ for the pork and DM ████████ for the beef).

The firm is asking for the import duties to be repaid, invoking the existence of special circumstances within the meaning of Article 13 of Regulation (EEC) No 1430/79. It argues that as an exporter it had to use a Community approved slaughterhouse.

However, the firm has continued to use the Basle slaughterhouse even though Lörrach has regained its licence.

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 25 March 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 used the outward processing arrangements to cover slaughter of the animals in Basle; whereas it therefore paid duty only on the differential;

Whereas the operation constituted a standard application of the outward processing arrangements; whereas the rules governing the arrangements were correctly applied; whereas there are no grounds for a waiver of the existing rules;

Whereas after the Lörrach abattoir recovered its licence the firm continued to use the slaughterhouse in Basle and to pay differential duties;

Whereas objectively no overriding factor prevented use of another abattoir in Germany;

Whereas, in the circumstances a special situation does not exist;

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 DM ▆▆▆▆▆▆ requested by Germany on 26 November 1992 is hereby found not to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 4.6.1993   For the Commission