

Commission Decision
of 06-03-1998

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

(request submitted by the Federal Republic of Germany)

Ref. **REM 19/97**

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

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92,² and in particular Article 907 thereof,

Whereas by letter dated 5 September 1997, received by the Commission on 19 September 1997, 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,³ as last amended by Regulation (EEC) No 1854/89⁴ and under Article 239 of Regulation (EEC) No 2913/92, whether the remission of import duties is justified in the following circumstances:

¹ OJ No L 302, 19.10.1992, p. 1.

² OJ No L 253, 11.10.1993, p. 1.

³ OJ No L 175, 12.7.1979, p. 1.

⁴ OJ No L 186, 30.6.1989, p. 1.

Between October 1993 and February 1995 a retired US army liaison officer, hereinafter referred to as “the person concerned”, bought duty-free goods, including clothing and foodstuffs, at the stores for US troops serving in Germany. These goods, which the person concerned paid for partly out of his own pocket and partly with funds donated by German citizens and associations, were flown to Bosnia-Herzegovina by US military aircraft based in Frankfurt as part of an aid programme.

Before retiring from the US army, the person concerned had been a member of the United Nations Protection Force (Unprofor). As such, he held an Unprofor pass, which enabled him to enter the stores in question and buy goods. He had obtained written confirmation of this right from a “Commander of the US Air Force in Europe”, in Frankfurt, and the “Sector Administration Offices” in Sarajevo.

However, inquiries by the competent US and German authorities revealed that, as a member of UN personnel, the person concerned was not entitled by NATO standing orders to purchase duty-free goods in US forces stores and that his shopping pass had not been issued by the authorised US services.

The competent German authorities therefore demanded that the person concerned pay the customs duties avoided, a sum of DM 4 755.81, which he is asking to be remitted;

Whereas the person concerned has stated that he has seen the dossier submitted to the Commission by the German authorities and has nothing to add;

Whereas 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 9 January 1998 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas Article 13(1) of Regulation (EEC) No 1430/79, applicable in this case to that part of the customs debt incurred before 1 January 1994, 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;

Whereas Article 239 of Regulation (EEC) No 2913/92, applicable in this case to that part of the customs debt incurred after 1 January 1994, 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;

Whereas the person concerned was not, as a member of UN personnel, entitled to purchase duty-free goods in US forces stores; whereas import duties totalling DM 4 755.81 were therefore payable on the purchases made;

Whereas, however, the person concerned could show written authorisations giving him free access to US forces stores; whereas his Unprofor pass was accepted in the stores when he made the duty-free purchases in question; whereas he had grounds for believing that he was entitled to engage in such transactions;

Whereas the goods in question, which were distributed to the inhabitants of Sarajevo under an aid programme, left the Community territory and did not enter the Community market;

Whereas the circumstances of this case constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 and a situation covered by Article 239 of Regulation (EEC) No 2913/92;

Whereas no deception or obvious negligence may be attributed to the person concerned in this case;

Whereas, therefore, the remission of import duties requested is justified in this case,

HAS DECIDED AS FOLLOWS:

Article 1

The remission of import duties in the sum of DM 4 755.81 requested by the Federal Republic of Germany on 5 September 1997 is hereby found to be justified.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 06.03.1998

For the Commission