

COMMISSION DECISION

of 10-11-1995

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

(request submitted by Germany)

REM 3/95

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 7 June 1995, received by the Commission on 16 June 1995, 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 3069/86(4), whether the repayment of import duties was justified in the following circumstances:

A German firm was granted an unrestricted outward processing authorization for the manufacture of women's clothing in Poland, Hungary and the Czech Republic. From July 1992 customs admitted goods re-imported under this procedure free of duty on the basis of the preferences laid down for the compensating products in question, without the prior authorization required under Article 4 of Regulation (EEC) No 636/82 ever having been presented(5) Following a complaint from the office responsible for prior control, the main customs office enforced a tax amendment decision dated 5 May 1995 for the post-

(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, 12.07.1979, p. 1

(4) OJ No L 286, 09.10.1986, p.1

(5) OJ No L 076, 20.03.1982, p. 1

clearance recovery from the firm of duties totalling XXXXX. The firm appealed against the tax amendment decision, arguing that the customs office concerned had granted it exemption from duties without asking for the prior authorization. It had no way of detecting the error and has since received the authorization.

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 2 October 1995 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment 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 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 it was as a result of an error by the customs office of import that the firm was not required to produce the authorization for the admission free of duty of the goods in question and that customs duties were not collected;

Whereas Protocol 1 to the EEC-Czechoslovakia Agreement, which, like Protocol 1 to the EEC-Hungary and the EEC-Poland Agreements, states that the duties "applied to reimports into the Community of textile products falling within the categories listed in the Annex to Council Regulation (EEC) No 636/82 ... shall be eliminated on the date of entry into force of the Agreement", leaves room for doubt as to the need to demand the authorization provided for in the said Regulation;

Whereas the Member States have differed in their interpretation of these Protocols;

Whereas the Commission, aware of the need to clarify matters, has several times notified the Member States of the interpretation to be placed on these Protocols; whereas the corresponding passages in the Agreements subsequently concluded with the other countries of Central and Eastern Europe (Romania and Bulgaria) were made clearer;

Whereas there was therefore genuine uncertainty as to the correct interpretation of these texts and the error by customs could not reasonably have been detected by the firm liable; whereas such a situation could therefore be considered "special circumstances" within the meaning of Article 13 of Regulation (EEC) No 1430/79;

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

Whereas, 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 XXXX requested by Germany on 7 June 1995 is hereby found to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 10-11-1995

For the Commission