

COMMISSION DECISION
of 27-6-1995
finding that the repayment of import duties in a particular
case is not justified

(request submitted by France)

REM 13/95

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 Council Regulation (EEC) No 2913/92,² and in particular Article 907 thereof,

Whereas by letter dated 14 November 1995, received by the Commission on 21 November 1995, France asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the repayment 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.

A French company imported chemicals from the United States which were processed under the inward processing procedure for re-export to Brazil. A declaration was lodged for the export of these compensating products to Brazil via Antwerp. However, the products underwent a quality control check in Antwerp which revealed flaws. Consequently, they were not exported and were returned to France without leaving the Community customs territory.

The company gave its agent instructions for handling the return of the products to France. However, in the absence of sufficiently precise instructions and as he was used to handling returns of goods following simple export for this particular company, the agent lodged a declaration for the import of goods from a third country and requested the procedure for returned goods, thereby avoiding payment of the import duties.

During a post-clearance check, the customs service ascertained that the procedure for returned goods did not apply to this particular case since the goods concerned were not of Community origin and had not in fact left the Community customs territory. As the relevant declarations could no longer be invalidated, the customs service collected duties amounting to XXXXX. The company concerned has now requested repayment of this sum.

Whereas in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, the administrative procedure was suspended for the period 24 January to 8 March of this year; whereas additional information requested by the Commission by letter dated 24 January was sent by the French authorities by letter dated 8 March and received by the Commission on the same day;

Whereas the company concerned has stated that it is aware of the facts transmitted by the French authorities to the Commission 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 20 March 1996 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas in accordance with Article 239 of Regulation (EEC) No 2913/92, import duties may be repaid or remitted in situations other than those referred to 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, pursuant to Article 187 of Regulation (EEC) No 2913/92, the goods concerned were not eligible for the returned goods procedure as they had not left the Community customs territory and were not of Community origin;

Whereas by lodging an import declaration and requesting the procedure for returned goods although that procedure was not applicable, the agent of the company concerned released the goods for free circulation without the amount of the duty actually owed being entered in the accounts;

Whereas consequently the goods did in fact enter the Community's commercial channels;

Whereas therefore import duties are owed both on the goods previously imported from the United States and on the Community goods incorporated in them;

Whereas the agent's mistake only came to light during a post-clearance check by the customs service;

Whereas the circumstances of the case do not constitute a situation of the type referred to in Article 239 of Regulation (EEC) No 2913/92;

Whereas the fact that the declarant made a mistake equally does not constitute a situation of the type referred to in Article 239 of Regulation (EEC) No 2913/92;

Whereas such an error committed by a professional person with experience in customs clearance must be considered as negligence;

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 XXXXX requested by France on 14 November 1995 is hereby found not to be justified.

Article 2

This Decision is addressed to France.

Done at Brussels, 27-6-1996

For the Commission