

REMB/NON

COMMISSION DECISION

of 13.10.1992

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

(request submitted by Germany)

REM 13/92



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 3 September 1992, received by the Commission on 11 September 1992, Germany requested the Commission to decide, pursuant to Article 13 of Regulation (EEC) No 1430/79, whether the repayment of import duties is justified in the following circumstances:

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 1991 and 1992 a German firm imported unbleached fabric from Hungary for which it presented certificates of origin Form A with the import declarations. These certificates were not accepted as the fabric had been made from yarns of German origin and were not therefore within the terms of the origin rules set out in Regulation (EEC) No 693/88.⁴ Customs duties were therefore levied on this fabric.

Accordingly, the firm sought authorization to use the outward processing arrangements for subsequent consignments. This was granted and a reduced rate of duty was levied on the reimports under the rules in force.

The firm applied for repayment of the duty paid on the grounds that a special situation existed within the meaning of Article 13 of Regulation (EEC) No 1430/79 as it had twice telephoned the customs authorities and had been told that the goods could be imported duty-free provided Form A certificates of origin were submitted;

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 8 January 1993 under the auspices 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, which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

4 OJ No L 77, 22.3.1988, p. 1.

Whereas Regulation (EEC) No 693/88 on the definition of the concept of originating products states that unbleached fabric made from non-originating yarn is not sufficient to confer originating status; whereas the firm should have known from consulting the Official Journal that the goods could not be imported duty-free;

Whereas oral information provided by the German customs authorities cannot be considered binding on it, and a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 cannot therefore be claimed to exist by the firm in question;

Whereas the firm's failure to complete outward processing formalities is attributable to the fact that it wrongly judged the goods it imported to have originating status; whereas the customs authorities cannot be held responsible for such an omission;

Whereas, consequently the fact that the outward processing arrangements could not be authorized retroactively does not constitute a special situation as regards the firm in question;

Whereas the firm did not consult the Official Journal containing Regulation (EEC) n° 693/88 and in this regard it acted with negligence;

Whereas the conditions laid down in Article 13 of Regulation (EEC) No 1430/79 are not accordingly satisfied;

Whereas, therefore, the repayment of import duties requested is not justified,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties of DM [REDACTED] requested by Germany on 3 September 1992 is hereby found not to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 3.3.1993

For the Commission