

Commission Decision  
of 8-9-1994  
finding that a repayment of import duties  
in a particular case is not justified

(Request submitted by Germany)

Ref: **REM:9/94**  
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**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,<sup>1</sup>

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, and in particular Article 907 thereof,<sup>2</sup>

Whereas by letter dated 7 March 1994, received by the Commission on 15 March 1994, 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,<sup>3</sup> as last amended by Regulation (EEC) No 3069/86,<sup>4</sup> whether the repayment of import duties is justified in the following circumstances:

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<sup>1</sup> OJ No L 302, 19.10.1992, p.1.

<sup>2</sup> OJ No L 253, 11.10.1993, p.1.

<sup>3</sup> OJ No L 175, 12.07.1979, p.1.

<sup>4</sup> OJ No L 286, 09.10.1986, p.1.

In January 1990, an Austrian firm imported into Germany fifteen automatic games for temporary use at a fair, using an ATA carnet issued in Austria.

At the end of January, four of these games were reexported on presentation of the ATA carnet, which was partially discharged.

In June 1990, seven other games were returned to Austria, using the common transit document (T2 procedure).

As the ATA carnet had not been discharged, the customs administration levied customs duties on the eleven games for which the ATA carnet was not presented on export.

The Austrian Chamber of Commerce, which issued the carnet through its guarantor in Germany, applied for a repayment for those goods reexported under T2 transit since proof of their release onto the Austrian market had been provided. The duties in question totalled XXXX.

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 4 July 1994 within the section for general customs rules/repayment of the Customs Code Committee 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 the said Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas the exit voucher of the ATA carnet was not presented to the customs office of exit on export of the goods in question for discharge of the carnet; whereas the goods were reexported using a T2 procedure common transit document;

Whereas Article 28(1) of Council Regulation (EEC) No 3599/82 makes provision for temporary import arrangements to be discharged when the goods are placed under external Community transit arrangements (equivalent to the T1 common transit procedure);<sup>5</sup>

Whereas the forwarding agent made out a T2 transit document instead of a T1 transit document; whereas such a mistake gave rise to a customs debt pursuant to Article 203 of the Community Customs Code;

Whereas, however, failure to comply with the rules of a customs procedure cannot constitute a special situation;

Whereas, in any event, a mistake by a customs clearance officer in making out the T2 transit document can be considered as obvious 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 XXXX requested by Germany on 7 March 1994 is hereby found not to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 8-9-1994

For the Commission

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<sup>5</sup> OJ No L 376, 31.12.1982.