

COMMISSION DECISION

of 17-07-1997

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

(request submitted by Sweden)

Ref. **REM 1/97**

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

Whereas by letters dated 6 November 1996 and 22 January 1997, received by the Commission on 19 November 1996 and 30 January 1997, Sweden 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:

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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 .

For a number of years a firm (hereafter “the person concerned”) imported computer parts into Sweden from the United States, Hong Kong, Japan and South Korea. Until 31 December 1994 it paid the Swedish customs tariff applicable to microchips known as DRAM SIMMs

On 1 January 1995 Sweden became a Member of the European Union and therefore bound by Community law, including anti-dumping legislation.

However, no Swedish version of the relevant Community legislation was available at the beginning of 1995, and the person concerned, after contacting the Swedish authorities to find out whether some of his imports might be subject to anti-dumping duty, concluded from what he was told by local customs that no such duty was payable. In January and March 1995, he imported DRAM chips from a number of non-EU countries without paying anti-dumping duty.

During a post-clearance check the authorities noted that not all of the products imported from Japan and South Korea qualified for exemption from anti-dumping duty. The duty should therefore have been levied at 60% on products originating in Japan and 24.7% on products originating in South Korea under, respectively, Council Regulation (EEC) No 2112/90 of 23 July 1990 imposing a definitive anti-dumping duty on imports of certain types of electronic microcircuits known as DRAMs originating in Japan and collecting definitively the provisional duty,<sup>3</sup> as last amended by Regulation (EEC) No 2967/92,<sup>4</sup> and Council Regulation (EEC) No 611/93 of 15 March 1993 imposing a definitive anti-dumping duty on imports into the Community of certain electronic microcircuits known as DRAMs originating in the Republic of Korea and exported by companies not exempted from such a duty, and collecting definitively the provisional anti-dumping duty.<sup>5</sup>

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<sup>3</sup> OJ No L 193, 25.7.1990, p. 1.

<sup>4</sup> OJ No L 299, 15.10.1992, p. 4.

<sup>5</sup> OJ No L 66, 18.3.1993, p. 1.

A total of XXXX of duty was claimed from the person concerned, who paid, but sought repayment under Article 239 of Regulation (EEC) No 2913/92 on the grounds that this was a special situation involving no deception or obvious negligence on his part;

Whereas by letter dated 24 March 1997 the Commission asked for additional information which it received from the Swedish authorities on 23 April 1997 - letter of 16 April 1997 - and therefore in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93 the administrative procedure was suspended for that period;

Whereas the operator states that he has seen the dossier submitted to the Commission by the Swedish 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 22 May 1997 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 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 under Regulations (EEC) Nos 2112/90 and 611/93 imports of electronic microcircuits known as DRAMs originating in Japan and South Korea were subject to anti-dumping duty; whereas the import duties paid post-clearance were therefore actually owed;

Whereas, however, at the time the goods were imported no Swedish text of that legislation was available either to the person concerned or to the competent Swedish authorities, as the regulations had not then been published in the Swedish version of the Official Journal of the European Communities;

Whereas a trader cannot be blamed for failure to apply Community rules correctly if the legislation does not exist in the language of the Member State concerned;

Whereas the person concerned had asked the competent authorities in December 1994 whether he would be liable as from 1 January 1995 for anti-dumping duty on these products, which he imported regularly;

Whereas these factors are such as to constitute a situation covered by Article 239 of Regulation (EEC) No 2913/92;

Whereas in the special circumstances of 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 Sweden on 6 November 1996 and 22 January 1997 is hereby found to be justified.

Article 2

This Decision is addressed to Sweden.

Done at Brussels, 17-07-1997

For the Commission