

REMB/NO

COMMISSION DECISION
of 18-7-1994
finding that the repayment of import duties in a particular
case is not justified

(request submitted by the Netherlands)

REM 7/94

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, and in particular Article 907 thereof,²

Whereas by letter dated 17 February 1994, received by the Commission on 22 February 1994, the Netherlands 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)

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, 12.7.1979, p.1.

No 3069/86,⁴ whether the repayment of import duties is justified in the following circumstances:

⁴ OJ No L 286, 9.10.1986, p.1.

A customs agent completed a T1 declaration for the transport of textiles originating in third countries to a client in Skopje, Yugoslavia. The documents gave Freilassing in Germany as the office of destination. The goods and the documents left for Yugoslavia with a Yugoslav haulier.

The T1 declaration was not discharged. Upon being informed of its non-discharge, the agent and his principal tried to track down the haulier to obtain information concerning the undischarged documents. Their efforts were to no avail. They contacted the client in Skopje, who confirmed that the goods had been received and promised to send proof and try to trace the haulier, but did not do so. The agent and his principal heard from other sources that the Skopje client's business had been destroyed in the fighting. It was therefore impossible to find out whether the goods covered by the undischarged declaration had actually reached Yugoslavia. The declarant has asked for duties to be repaid under Article 13 of Regulation (EEC) No 1430/79 on the grounds that the war made it impossible to determine what had become of the goods.

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 19 May 1994 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 Article 13 of Council Regulation (EEC) No 227/77 of 13 December 1976 concerning Community transit requires the principal to produce the goods intact at the office of destination within the prescribed time limit and present the T1 declaration for discharge;⁵

⁵ OJ No L 38, 9.2.1977, p.1.

Whereas a customs investigation has shown that neither the goods nor the documents were presented at the German customs office of destination;

Whereas the absence of these documents means that the principal is unable to prove the regularity of the transit operation by furnishing the evidence referred to in Article 11b of Commission Regulation (EEC) No 1062/87 of 27 March 1987 on provisions for the implementation of the Community transit procedure and for the simplification of that procedure;⁶

Whereas neither the export declaration nor the goods were presented on exit from the Community; whereas, therefore, no proof has been furnished that the goods left Community customs territory;

Whereas the situation in Yugoslavia, which has made it impossible to find out what has become of the goods, is not material and cannot be considered a special situation justifying the lack of proof that the goods left Community customs territory;

Whereas the person concerned has, in these circumstances, shown obvious negligence;

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

⁶ OJ No L 107, 22.4.1987, p.1.

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXXX requested by the Netherlands on 17 February 1994 is hereby found not to be justified.

Article 2

This Decision is addressed to the Netherlands.

Done at Brussels, 18-7-1994

For the Commission