

**EN**

**REM 22/98**



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.07.1999

**COMMISSION DECISION**

**of 22.07.1999**

**finding that the remission of import duties is not justified in a particular case  
(Request submitted by Germany)**

**(REM 22/98)**

**COMMISSION DECISION**

**of 22-07-1999**

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

**(Request submitted by Germany)**

**(REM 22/98)**

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> as last amended by Regulation (EC) No 955/1999,<sup>2</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,<sup>3</sup> as last amended by Regulation (EC) No 502/1999,<sup>4</sup> and in particular Article 907 thereof,

Whereas by letter dated 6 October 1998, received by the Commission on 20 October 1998, Germany asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the remission of import duties is justified in the following circumstances:

---

<sup>1</sup> OJ L 302, 19.10.1992, p. 1.

<sup>2</sup> OJ L 119, 7.5.1999, p. 1.

<sup>3</sup> OJ L 253, 11.10.1993, p. 1.

<sup>4</sup> OJ L 65, 12.3.1999, p. 1.

Between August 1994 and September 1995 a German firm acted as the principal in 93 operations conducted under the external Community transit procedure, involving frozen chicken breasts, beef and textiles purchased in China, Thailand and Brazil.

Under the external Community transit procedure, the goods should have been sent from German to Spain and presented to the customs office of destination in the Canary Islands by the time limit set in each case.

Customs inquiries revealed that the goods had not been duly presented to the customs office of destination and that discharge of the transit procedure had simply been faked.

Since a customs debt had been incurred under Article 203 of Regulation (EEC) No 2913/92, the competent German authorities asked the principal to pay import duties on all these operations, a sum amounting to XXXXXX. The firm applied for remission of these duties.

Whereas the firm stated that it had seen the dossier submitted to the Commission by the German authorities and had nothing to add;

Whereas, by letter of 20 April 1999, the Commission informed the firm of its intention to refuse its request and gave the reasons for this decision;

Whereas, by letter of 4 May 1999 received by the Commission on 10 May 1999, the firm gave its views on the objections in question; whereas it maintained its position that the circumstances of the case in question constituted a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92, as no deception or obvious negligence could be attributed to the firm; whereas it said that in the case in point, customs officials had been actively involved in faking the discharge of the transit operations and that despite the absence of a formal finding of corruption by the competent national authorities, the Commission should accept it as proven that customs officials had actively participated in the fraud; whereas finally, the firm maintains that it was not negligent in supervising the sub-contracted transport operations;

Whereas the administrative procedure was suspended in accordance with Article 907 of Regulation (EEC) No 2454/93 between 20 April and 10 May 1999;

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 11 June 1999 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 special 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 the fact that the goods in question had not been presented to the customs office of destination although they had been placed under the external Community transit procedure gives rise to a customs debt payable by the principal;

Whereas, as principal, the firm is responsible to the authorities for the proper implementation of Community transit operations, even if it is the victim of fraud perpetrated by a third party; whereas this is a normal commercial risk run by the principal;

Whereas the principal's liability for the proper conduct of Community transit operations cannot be expected to extend to cases in which representatives of the customs administration actively assist in committing fraud; whereas the principal can legitimately expect the functioning of the administration not to be undermined by corrupt customs officials;

Whereas in this case, however, it cannot be concluded from the information given in the dossier supplied by the German authorities that the involvement of one or more Community customs officials in the fraud has been proven by a competent authority;

Whereas, therefore, the information contained in the dossier does not show that the case constitutes a special situation within the meaning of Article 239 of Council Regulation (EEC) No 2913/92;

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

HAS ADOPTED THIS DECISION:

*Article 1*

The remission of import duties in the sum of XXXXXX requested by Germany on 6 October 1998 is not justified.

*Article 2*

This Decision is addressed to Germany.

Done at Brussels, 22-07-1999

*For the Commission*

*Member of the Commission*