

**COMMISSION DECISION**  
of 12-2-1996  
finding that the repayment of import duties in a particular  
case is not justified

(request submitted by Germany)

**REM 4/95**  
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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,<sup>1</sup> and in particular Article 907 thereof,

Whereas by letter dated 9 June 1995, received by the Commission on 29 June 1995, 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>1</sup> as last amended by Regulation (EEC) No 3069/86,<sup>1</sup> whether the repayment of import duties is justified in the following circumstances:

A German firm engaged in the manufacture of women's clothing had authorization for a temporary outward processing arrangement with Hungary until April 1995. The import duty levied on the processed goods was reduced correspondingly in accordance with the differential method on presentation of a EUR 1 or EUR 2 certificate.

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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, 12.07.1979, p.1.

4 OJ No L 286, 09.10.1986, p.1.

Since the entry into force of the EEC-Hungary Agreement and Protocol 1 thereto on 1 March 1995, the goods could have been admitted free of duty on the basis of the preferences introduced for the compensating products in question had the additional prior authorization required by Article 4 of Regulation (EEC) No 636/821 been obtained.

The firm is requesting the repayment of the import duties levied on imports between June 1992 and March 1993. It argues that in April 1992 it applied to the competent German authority for the requisite authorizations, which were refused on the grounds that the firm could not prove that it was a professional manufacturer because it was not listed in the commercial register. After the register had been corrected in April 1993, the firm was able to provide formal proof that it was a professional manufacturer and was accordingly issued with the prior authorizations.

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 2 October 1995 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 Protocol 1 to the EEC-Hungary Agreement states that the duties applied to reimports into the Community of textile products falling within the categories listed in the Annex to Council Regulation (EEC) No 636/82 are to be eliminated on the date of entry into force of the Agreement; whereas, in application of this provision, an authorization to use the outward processing procedure must be sought and obtained prior to the operations concerned in accordance with Article 4 of Regulation (EEC) No 636/82;

Whereas such prior authorization can be obtained only on condition that the applicant is a natural or legal person established in the Community and a professional manufacturer;

Whereas the firm concerned was unable to prove that it was a professional manufacturer in the period from June 1992 to March 1993 because it was not on Germany's

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5 OJ No L 76, 20.03.1982, p. 1.

commercial register; whereas it did not therefore satisfy the conditions for obtaining prior authorization and reimporting goods under the outward processing procedure;

Whereas the party concerned was therefore eligible neither for the outward processing procedure nor, in consequence, for exemption from customs duties under Article 2(3) of Protocol 1 to the EEC-Hungary Agreement;

Whereas the lengthy period needed by the firm concerned to have the commercial register corrected by the competent authorities in Germany does not constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79;

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

Whereas in application of the judgement of the Court of First Instance of the European Communities (Case T-346/94) the Commission had invited the German applicant authorities to ask the party concerned for a declaration acknowledging that he was cognisant with the file transmitted to the Commission and that he had nothing to add;

Whereas the German authorities have not replied to the Commission and have not given evidence that the party concerned had been duly heard accordingly to the abovementioned jurisprudence;

whereas therefore in these circumstances and despite the silence of the German authorities, the Commission, for reasons of good management, is obliged to adopt the present decision solely on the basis of the information available to it;

**HAS ADOPTED THIS DECISION:**

Article 1

The repayment of import duties in the sum of XXXXXX requested by Germany on 9 June 1995 is hereby found not to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 12-2-1996

